A DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1917,

WITH AN INDEX OF CASES,

BEING A SUPPLEMENT TO THE CONSOLIDATED DIGEST OF INDIAN LAW CASES, 1836—1909.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE

OF THE INNER TEMPLE BARRISTER-AT-LAW, ADVOCATE OF THE HIGH COURT, CALCUTTA, AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES.

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
1918

Price Four Rupees.
English Price Six Shillings.

Agents for the Sale of Books Published by the Superintendent of Government Printing India, Calcutta.

IN EUROPE.

Constable & Co. 10, Orange Street, Leicester Square, London, W.C.

Kegan Paul, Trench, Trübner & Co., 68-74, Carter Lane, E.C., and 25, Museum Street, London, W.C.

Bernard Quaritch, 11, Grafton Street, New Bond Street, London, W.

P. S. King & Sons, 2 & 4, Great Smith Street, Westminster, London, S.W.

H. S. King & Co., 65, Cornhill, E.C., and 9, Pall Mall, London, W.

Grindlay & Co., 54, Parliament Street, London, S.W.

Luzac & Co., 46, Great Russell Street, London, W.C.

W. Thacker & Co., 2, Creed Lane, London, E.C.

T. Fisher Unwin, Ltd., 1, Adelphi Terrace, London, W.C.

Wm. Wesley & Son, 28, Essex St., Strand, London.

B. H. Blackwell, 50 & 51, Broad Street, Oxford.

Deighton Bell & Co., Ltd., Cambridge.

Oliver and Boyd, Tweeddale Court, Edinburgh.

E. Ponsonby, Ltd., 116, Grafton Street, Dublin.

Ernest Leroux, 28, Rue Bonaparte, Paris.

Martinus Nijhoff, The Hague, Holland.

IN INDIA AND CEYLON.

Thacker, Spink & Co., Calcutta and Simla.

Newman & Co., Calcutta.

R. Cambray & Co., Calcutta.

S. K. Lahiri & Co., Calcutta.

B. Banerjee & Co., Calcutta.

The Indian School Supply Depôt, 309, Bow Bazar Street, Calcutta, and 226, Nawabpur, Dacca.

Butterworth & Co. (India), Ltd., Calcutta.

Rai M. C. Sarcar Bahadur & Sons, 90-2A, Harrison Road, Calcutta.

The Weldon Library, 18-5, Chowringhee Road, Calcutta.

Standard Literature Company, Limited, Calcutta.

Lal Chand & Sons, Calcutta.

Higginbotham & Co., Madras.

V. Kalyanarama Iyer & Co., Madras.

G. A. Natesan & Co., Madras.

S. Murthy & Co., Madras.

Thompson & Co., Madras.

Temple & Co., Madras.

P. R. Rama Iyer & Co., Madras.

Vas & Co., Madras.

V. M. Gopalakrishna Kone, Madura.

Thacker & Co., Ltd., Bombay.

A. J. Combridge & Co., Bombay.

D. B. Taraporevala, Sons, & Co., Bombay.

Mrs. Radhabai Atmaram Sagoon, Bombay.

Sunder Pandurang, Bombay.

Gopal Narayan & Co., Bombay.

Ram Chandra Govind & Son, Kalbadevi, Bombay.

A.H. Wheeler & Co., Allahabad, Calcutta, and Bombay.

N. B. Mathur, Supt., Nazir Kanun Hind Press, Allahabad.

Rai Sahib M. Gulab Singh & Sons, Mufid-i-'Am Press, Lahore and Allahabad.

Rama Krishna & Sons, Lahore.

Supt., American Baptist Mission Press, Rangoon.

Manager, the "Hitavada", Nagpur.

S. C. Talukdar, Proprietor, Students and Company, Cooch Behar.

A. M. & J. Ferguson, Ceylon.

Manager, Educational Book Depôts, Nagpur and Jubbulpore.*

Manager of the Imperial Book Depôt, 63, Chandney Chauk Street, Delhi.*

Manager, "The Agra Medical Hall and Co-operative Association, Ltd." (Successors to A. John & Co., Agra.)*

Supt., Basel Mission Book and Tract Depository, Mangalore.*

P. Varadachary & Co., Madras.*

H. Liddell, Printer, etc., 7, South Road, Allahabad.*

Ram Dayal Agarwala, 184, Katra, Allahabad.*

D. C. Anand & Sons, Peshawar.*

Manager, Newal Kishore Press, Lucknow.*

* Agents for the sale of Legislative Department publications only.

PREFACE.

THIS volume is published as a supplement to the new Consolidated Digest, 1836—1909. It contains the cases reported in the four Series of the Indian Law Reports for 1917, the Law Reports Indian Appeals, and the Calcutta Weekly Notes for the year 1916-17.

The different sets of Law Reports in which the same cases have been reported are specifically noted in the "Table of Cases" published with this volume.

For easy reference, several words and phrases, which are expounded in the judgments digested in this volume, are given in a separate list arranged in alphabetical order, under the heading "Words and Phrases".

B. D. BOSE.

HIGH COURT, CALCUTTA:
The 29th July, 1918.

CONTENTS.

		PAGE.
THE HIGH COURT, CALCUTTA	1917	vii
THE HIGH COURT, BOMBAY		vii
THE HIGH COURT, MADRAS		viii
THE HIGH COURT, ALLAHABAD		viii
THE PRIVY COUNCIL		viii
TABLE OF REPORTS DIGESTED		ix
TABLE OF HEADINGS, SUB-HEADINGS AND CROSS-REFERENCES IN THE DIGEST		xi
TABLE OF CASES IN THE DIGEST		xxi
DIGEST OF CASES		Col. 1

THE HIGH COURT, CALCUTTA, 1917.

CHIEF JUSTICE:

The Hon'ble SIR LANCELOT SANDERSON, KT., K.C.

PUISNE JUDGES:

The Hon'ble SIR JOHN G. WOODROFFE, KT.
" " " ASUTOSH MOOKERJEE, KT., C.S.I.
" " " CHARLES W. CHITTY, KT.
" " E. E. FLETCHER.
" " D. CHATTERJEE (*Resigned*).
" " N. R. CHATTERJEA.
" " W. TEUNON.
" " T. W. RICHARDSON.
" " SIR ASUTOSH CHAUDHURI.
" " C. P. BEACHCROFT.
" " H. WALMSLEY.
" " W. E. GREAVES.
" " B. B. NEWBOULD.
" " NAWAB SIR SHAMS-UL-HUDA, K.C.I.E.
" " A. H. CUMING (*Offg.*).
" " M. SMITHER (*Offg.*).

The Hon'ble T. C. P. GIBBONS, K.C., *Advocate-General.*
" " SIR SATYENDRA SINHA, *Advocate-General* (*Offg.*).
" " B. C. MITTER, *Advocate-General* (*Offg.*).
" " S. R. DAS, *Standing Counsel.*

THE HIGH COURT, BOMBAY, 1917.

CHIEF JUSTICE:

The Hon'ble SIR BASIL SCOTT, KT. (*On deputation*).
" " " S. L. BATCHELOR, KT. (*Acting*).

PUISNE JUDGES:

The Hon'ble SIR S. L. BATCHELOR, KT.
" " F. C. O. BEAMAN.
" " SIR J. J. HEATON, KT.
" " N. C. MACLEOD.
" " L. A. SHAH.
" " A. B. MARTEN.
" " A. M. KAJIJI (*Acting*).

The Hon'ble T. J. STRANGMAN, *Advocate-General.*
MR. G. D. FRENCH, *Legal Remembrancer.*

THE HIGH COURT, MADRAS, 1917.

CHIEF JUSTICE:

The Hon'ble SIR JOHN WALLIS, KT.

PUISNE JUDGES:

The Hon'ble ABDUR RAHIM.
" " SIR WILLIAM B. AYLING, KT.
" " F. DUPRE OLDFIELD.
" " T. SADASIVA AYYAR, *Diwan Bahadur.*
" " C. G. SPENCER.
" " V. M. COUTTS TROTTER.
" " T. V. SESHAGIRI AYYAR.
" " J. H. BAKEWELL.
" " W. W. PHILLIPS.
" " C. F. NAPIER (*Additional*).
" " C. V. KUMARASWAMI SASTRIYAR, *Diwan Bahadur* (*Additional*).
" " K. SRINIVASA AYYANGAR (*Additional*).
" " C. KRISHNAN (*Offg.*).

The Hon'ble S. SRINIVASA AYYANGAR, *Advocate-General.*

THE HIGH COURT, ALLAHABAD, 1917.

CHIEF JUSTICE:

The Hon'ble SIR HENRY G. RICHARDS, KT., K.C.

PUISNE JUDGES:

The Hon'ble SIR GEORGE E. KNOX, KT.
" " " PRAMADA CHARAN BANERJI, KT.
" " WILLIAM TUDBALL.
" " MUHAMMAD RAFIQ.
" " THEODORE CARO PIGGOT.
" " HENRY CECIL WALSH, K.C.
" " ALFRED EDWARD RYVES (*Offg.*).

THE PRIVY COUNCIL, 1917.

LORD FINLAY, *Lord Chancellor.*
EARL OF HALSBURY.
EARL LOREBURN.
VISCOUNT HALDANE.
LORD BUCKMASTER.
LORD DUNEDIN.
LORD ATKINSON.
LORD SHAW.
LORD MOULTON.
LORD PARKER OF WADDINGTON.
LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
LORD STRATHCLYDE.
SIR SAMUEL GRIFFITH, G.C.M.C.
SIR EDMUND BARTON, G.C.M.G.
SIR JOHN EDGE.
SIR CHARLES FITZPATRICK, G.C.M.C
SIR SAMUEL EVANS, G.C.B.
SIR ARTHUR CHANNELL.
SYED AMEER ALI, C.I.E.
SIR WALTER PHILLIMORE, BART.
SIR JAMES ROSE-INNES, K.C.M.G.
SIR LAWRENCE JENKINS, K.C.I.E.

And those other members of the Privy Council who are within the provisions of the Statutes 3 & 4 Will. IV, c. 41, 44 Vict., c. 3, and 50 & 51 Vict., c. 70.

TABLE OF REPORTS DIGESTED.

Reports.	Period.	Number of volumes.	In what Court.	Abbreviations.
Indian Law Reports :—				
Calcutta Series, Vol. 44 .	1917	1	High Court, Calcutta, and Privy Council.	I. L. R. Calc.
Bombay Series, Vol. 41 .		1	High Court, Bombay, and Privy Council.	I. L. R. Bom.
Madras Series, Vol. 40 .		1	High Court, Madras, and Privy Council.	I. L. R. Mad.
Allahabad Series, Vol. 39 .		1	High Court, Allahabad, and Privy Council.	I. L. R. All.
Calcutta Weekly Notes, Vol. 21.	1916-17	1	High Court, Calcutta, and Privy Council.	C. W. N.
Law Reports Indian Appeals, Vol. 44.		1	Privy Council . . .	L. R. I. A.
		6		

TABLE

OF

HEADINGS, SUB-HEADINGS AND CROSS-REFERENCES IN THE DIGEST.

1917.

The headings and sub-headings under which the cases are arranged are printed in this table in capitals, the headings in black type and the sub-headings in small capitals. The cross-references are printed in ordinary type.

Abandonment.
Abatement of Suit.
Abishegam.
ABWAB.
Acceleration of Estate.
Acceptance.
ACCOUNT.
Accountant-General.
Accretion.
Accused Person.
Acknowledgment.
Acknowledgment of Debt.
ACQUITTAL.
Acts (India Council).
Actionable Claim.
Acts and Declarations of Government.
Adjudication.
Administration.
ADMINISTRATION SUIT.
Administrator.
Admission.
Adopted Son.
Adoption.
Adultery.
ADVERSE POSSESSION.
Advice (to Client).
AGENCY.
Aggrieved Party.
Agnates.
AGRA TENANCY ACT (II OF 1901).
Agreement.
Agriculturist.
Alien.
Alienation.
Alienee.
Alien Enemy.
Allegiance.
ALLUVION.
Alteration.
Ancestral Property.
Annuity.
Anticipatory Attachment.
APPEAL.
APPEAL, FORUM OF.
Appeal in Criminal Case.
APPEAL IN FORMA PAUPERIS.
APPEAL, RIGHT OF.
APPEAL TO PRIVY COUNCIL.
Appellate Court.
ARBITRATION.
Arbitrators.
ARMS ACT (XI OF 1878).
Arrest.
Artificial Channel.
Ascetic.
Assam Land Revenue Regulation (I of 1886).
Assault.
Assessed Land.
Assessment.
Assignee.
Assignment of Jodi.
ATTACHMENT.
Attachment and Sale.
Attachment before Judgment.

Attestation.
ATTORNEY'S LIEN.
Aurasa Son.
Award.

Bail.
BANKRUPTCY.
Bankruptcy Act (46 & 47 Vic., c. 52 of 1883).
BARGA KABULIYAT.
BARRISTER.
BENAMI PURCHASE.
Benefit.
Bengal Acts.
BENGAL MUNICIPAL ACT (BENG. III OF 1884).
Bengal Regulation (I of 1793).
BENGAL TENANCY ACT (VIII OF 1885).
Bequest.
Bequest to Daughter.
BHAG CHASIS.
Bhagdari Property.
Bicycle.
Bid.
BILL OF EXCHANGE.
Bill of Lading.
Birth.
Blindness.
Bombay Acts.
BOMBAY DISTRICT MUNICIPALITIES ACT, 1901.
BOMBAY DISTRICT POLICE ACT, 1890.
BOMBAY MUNICIPAL ACT, 1888.
BOMBAY PREVENTION OF GAMBLING ACT, 1887.
BOMBAY REVENUE JURISDICTION ACT, 1876.
Bona fide Claim.
BOND.
Breach of Contract.
British Baluchistan Regulation (IX of 1896).
BROACH AND KAIRA INCUMBERED ESTATES ACT (BOM. XXI OF 1881).
Broker.
Building.
Burden of Proof.
BURMESE LAW.
Bye-Law.

Calcutta Improvement Act (Beng.) 1911.
CALCUTTA MUNICIPAL ACT, 1899.
Caste.
CASTE DISABILITIES REMOVAL ACT, 1850.
Cause of Action.
Cess.
CHARITABLE INAMS.
Charities.
CHARTER-PARTY.
CHAUKIDARI CHAKARAN LANDS.
Cheating.
Child.
CHRISTIAN MARRIAGE ACT, 1872.
Civil and Revenue Courts.
Civil Court.
CIVIL PROCEDURE CODE, 1882.
CIVIL PROCEDURE CODE, 1908.
Claim Case.
Coercion.
Collusion.
Collusive Decree.
Commercial Intercourse with Enemies Ordinance (VI of 1914).
COMMISSIONER.
COMMON MANAGER.
Communication by Stranger.
COMPANIES ACT (VI OF 1882).
COMPANIES ACT (VII OF 1913).
Company.
COMPENSATION.
Complaint to Magistrate.
COMPROMISE.
Compromise Decree.
Compulsory Acquisition.
Conditional Order.
Condonation.
Conscious Possession.
Consequential Relief.
Consideration.
Conspiracy.
Construction.
CONSTRUCTION OF DEED.
CONSTRUCTION OF DOCUMENT.
CONSTRUCTION OF STATUTES.
Construction of Will.
CONTEMPT OF COURT.
CONTRACT.
CONTRACT ACT (IX OF 1872).
Contract of Guarantee.
Contract of Service.
Contract (Void).
CONTRACT WITH ALIEN ENEMY.
Contribution.
Control.
Convenience and Expediency.
Conversation.
Conveyance.
Conviction.
Co-owners.
Co-sharers.
COSTS.

Costs of Wife.
Counsel.
COUNTERFEIT COIN.
Court.
COURT-FEE.
Court-fees Act (VII of 1870).
Court of Wards.
Court of Wards Act (Beng.).
Court of Wards Act (Mad.).
Court-sale.
Creditor.
Criminal Appeal.
Criminal Breach of Trust.
Criminal Misappropriation.
CRIMINAL PROCEDURE CODE.
Criminal Trespass.
CRIMINAL TRIBES ACT, 1911.
Crown.
Crown Debt.
Crown Grants.
Cruelty to Animals.
Culpable Homicide not amounting to Murder.
Custody.
CUSTOM.
Custom of the Trade.
CUTCHI MEMONS.

DAMAGES.
Daughter.
De novo Trial.
Debt.
Debtor.
Debtor and Creditor.
Declaratory Decree.
DECREE.
Deed.
Defaulter.
Defence.
DEKKHAN AGRICULTURISTS' RELIEF ACT.
Delay.
Desertion.
Diluviated Land.
Director.
Discharge.
Discretion.
Discretion of Court.
Dishonest Intent.
Dismissal.
Dismissal for Default.
Dispossession.
Disqualification.
District Judge.
District Magistrate.
DISTRICT MUNICIPALITIES ACT (MAD.).
DIVORCE.
DIVORCE ACT, 1869.
Document.
Domicile.
Donor's Family.
Dowry.
Dunnage.
Dvyamushyayana Adoption.

EASEMENT.
EASEMENTS ACT (V OF 1881).
EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT, 1907.
East India Company.
EAST INDIAN RAILWAY.
Ejectment.
Eldest Son.
ELECTION.
Emergency Legislation.
Emergency Legislation Continuance Act, 1915.
Endorsement.
Endowment.
Enemy.
Enforcement of Right.
Enfranchisement.
Enfranchisement and Resumption.
Enhancement of Sentence.
Equity of Redemption.
Error.
Errors or Omissions.
Estate.
ESTATES LAND ACT (MAD.), 1908.
ESTOPPEL.
ESTOPPEL BY CONDUCT.
Etiquette of the Bar.
EVIDENCE.
EVIDENCE ACT (I OF 1872).
Examination.
Executing Court.
EXECUTION.
Execution Applications.
EXECUTION OF DECREE.
EXECUTION PROCEEDINGS.
EXECUTION SALE.
Executory Contracts.
Ex-parte Case.
EX-PARTE DECREE.
Ex-parte Order.
Expert Evidence.
Ex-proprietary Rights.
Ex-proprietary Tenants.
Extension of Time.

Fallow Lands.
False Charge.
False Defence.
False Information to Police.
Fariahs.
Fees.
Females.
Festival.
FINDING OF FACT.
FISHERY.
Fitness of Surety.
Fixed-rate Holding.
Fixtures.
Forcible Ejectment.
Foreign Judgment.
Forgery.
Fraud.
Fraudulent Representation.
Fraudulent Transfer.
Full Bench.

Gambling.
General Clauses Act, 1868.
General Clauses Act, 1897.
GIFT.
Government.
Government of India Act, 1915.
Governor-General in Council.
GRANT.
Grantor and Grantee.
Grove.
Guarantee.
GUARDIAN.
Guardian-ad-Litem.
GUARDIANS AND WARDS ACT, 1890.

HABEAS CORPUS.
Harvest.
Headings of Statutes.
Heirs.
HEREDITARY OFFICES ACTS (BOM.).
High Court.
High Court, jurisdiction of.
High Court Rules.
High Court Rules (App. Side).
High Court Rules (Orig. Side).
High Seas.
Hindu Joint Family.
HINDU LAW—ADOPTION.
HINDU LAW—ALIENATION.
HINDU LAW—CUSTOM.
HINDU LAW—ENDOWMENT.
HINDU LAW—GIFT.
HINDU LAW—INHERITANCE.
HINDU LAW—JOINT FAMILY.
HINDU LAW—JOINT FAMILY PROPERTY.
HINDU LAW—MAINTENANCE.
HINDU LAW—PARTITION.
HINDU LAW—REVERSIONERS.
HINDU LAW—STRIDHAN.
HINDU LAW—SUCCESSION.
HINDU LAW—WIDOW.
HINDU LAW—WILL.
Hindu Son.
Hindu Transfers and Bequests Act (Mad.), 1914.
Hindu Widow.
HINDU WILLS ACT, 1870.
HIRE-PURCHASE AGREEMENT.
Holidays.
Hostile Firms.
Hostile Foreigners' Trading Order, 1914.
House Drain.
House Sites.
Hundi.
Husband.
Husband and Wife.
Hypothecation Decree.

Immoral Proposal.
Immoveable Property.
INAM.
Inam Commissioner.
INAMDAR.
Indian Army Officer.
Indian Councils Act, 1861.
Informant.
Inherent Jurisdiction.
Inheritance.
Injunction.
Injured Person.
INSOLVENCY.
Insolvency Court.
INSOLVENCY PROCEEDING.
Insolvent.
Instalment Decree.
Instructions.
Insurance.
Intention.
Interest.
Interlocutory Appeal.
Internment.
Interpretation of Statutes.
Irrigation by Percolation.
IRRIGATION CESS ACT (MAD.), 1865.
Irrigation Cess (Amendment) Act (Mad.), 1900.

Irrigation Channel.

Jats.
Jodi.
Joint Debts.
Joint Family.
Joint-Family Property.
Joint Hindu Family.
Joint Owner.
Joint Proprietors.
Joint Trial.
Judgment.
Judgment-debtor.
Judi.
Judicial Discretion.
Judicial Officer.
JUDICIAL OFFICERS' PROTECTION ACT, 1850.
JURISDICTION.
Jurisdiction of Civil Courts.
JURISDICTION OF HIGH COURT.
Jury.
JURY, TRIAL BY.
JUTE.

Kanganam.
Kanungo.
Khairat.
Khamar Land
Khana-damad.
Khatedar.
Knowledge.

LAND ACQUISITION.
LAND ACQUISITION ACT, 1894.
Land Encroachment Act (Mad.), 1905.
Landholder.
Land Law in Bengal.
LANDLORD AND TENANT.
1. EJECTMENT.
2. EVICTION.
3. LEASE.
4. RENT.

LAND REVENUE CODE (BOM.), 1879.
LEASE.
Leasehold Property.
Leave of Court.
Leave to Sue.
Leave to Withdraw.
Legal Necessity.
LEGAL PRACTITIONER.
LEGAL PRACTITIONERS' ACTS.
Legatee.
Legislature.
Legitimacy.
Lessor and Lessee.
LETTERS PATENT, 1865.
Letters Patent, N.-W. P.
LIBEL.
License.
LIMITATION.
LIMITATION ACTS.
Liquidator.
LIS PENDENS.
Litigation.
LOCAL INVESTIGATION.
LOSS OF GOODS.
LUNACY ACTS.
Lunatic.
Lurking House-trespass.

Machinery.
Madras Acts.
MADRAS CITY MUNICIPAL ACT.
MADRAS IRRIGATION CESS.
Madras Irrigation Cess Act.
Madras University.
Madras University Regulations.
Magistrate.
Maha Brahmins.
MAHOMEDAN LAW—ALIENATION.
MAHOMEDAN LAW—DIVORCE.
MAHOMEDAN LAW—GIFT.
MAHOMEDAN LAW—MARRIAGE.
MAHOMEDAN LAW—PRE-EMPTION.
MAHOMEDAN LAW—WAKF.
MAHOMEDAN LAW—WILL.
Mahomedans.
Maintenance.
MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT.
Manu Kyay.
Mark by Illiterate Executant.
Marketable Title.
Marksman.
Marriage.
Mehr.
Merger.
Mesne Profits.
Mharki Vatan.
MINERALS.
MINING LEASE.
MINOR.
Mirasidar.
MIRASI VILLAGE.
Misappropriated Goods.
Misdirection.

MISDIRECTION TO JURY.
Misjoinder.
MISJOINDER OF PARTIES AND CAUSES OF ACTION.
Mistake.
Mitakshara.
Mittadar or Zamindar.
Mixed Fund.
Mokarari Lease.
MORTGAGE.
1. ASSIGNMENT.
2. BY GUARDIAN.
3. CONSTRUCTION.
4. EXONERATION.
5. MORTGAGEE, RIGHTS OF.
6. REDEMPTION.
7. SALE OF MORTGAGED PROPERTY.
8. USUFRUCTUARY MORTGAGE.
Mortgage Decree.
Mortgage Deed.
MORTGAGE SUIT.
Mortgagee.
Mortgagee in Possession.
Mortgagor.
MORTGAGOR AND MORTGAGEE.
Mosque.
MOSQUE PROPERTY, SUIT FOR.
Muafi Grant.
Municipal Bye-laws.
Municipal Offence.
Municipality.
Murder.
Muthawalli.
MUTT, HEAD OF.

Native Indian Subject of His Majesty.
Negotiable Instrument.
NEGOTIABLE INSTRUMENTS ACT, 1881.
Nomination of Junior or Senior.
NON-OCCUPANCY RAIYAT.
Non-performance of Work.
N.-W. P. Acts.
N.-W. P. RENT ACT.
Notice.
Notice to Government.
Notice to quit.
Numbers.

Obstruction.
Occupancy.
OCCUPANCY HOLDING.
Offerings.
Official Assignee.
Official Receiver.
Onus of Proof.
Oral Evidence.
Ordinance.
OUDH ACT, 1886.
Owner.

Panchayat.
Pandara Sannadhi.
PAPER CURRENCY ACT, 1910.
PARDANASHIN LADY.
Pardon.
Parties.
PARTITION.
PARTITION ACT, 1893.
Partition and Possession.
Partition Suit.
PARTNERSHIP.
Part-payment.
Payment towards Debt.
Pecuniary Sufficiency.
PEDIGREE.
PENAL CODE.
Penal Statutes.
PENALTY.
Pensions Act, 1871.
Permanent Hereditary Tenure.
Permanent Lease.
Permanent Settlement.
Permanent Settlement, 1793.
Petition.
Plaint.
Plaintiffs.
PLEADER.
Pleaders, Mukhtears, and Revenue Agents Act, 1865.
Pleaders of Lower Provinces Act, 1852.
Pleadings.
Police.
POLICE ACT, 1861.
Police Act (Bombay), 1890.
Police Diary.
Police Officer.
POSSESSION.
POWER OF ATTORNEY.
PRACTICE.
PRE-EMPTION.
1. CUSTOM.
2. FORMALITIES.
3. POSSESSION.
4. RIGHT OF PRE-EMPTION.
Prejudice.
Preliminary Point.
Prerogatives.

Presidency Small Cause Court.
PRESIDENCY SMALL CAUSE COURTS ACT, 1882.
PRESIDENCY TOWNS INSOLVENCY ACT, 1909.
Presumption.
PREVENTION OF CRUELTY TO ANIMALS ACT, 1890.
Previous Conviction.
PREVIOUS CONVICTION, PROOF OF.
Principal and Agent.
PRINCIPAL AND SURETY.
Priority.
Privilege.
Privity of Estate.
PRIVY COUNCIL, PRACTICE OF.
PROBATE AND ADMINISTRATION ACT, 1881.
Procedure.
Process of Court.
Proclamation.
PROFESSIONAL MISCONDUCT.
PROMISSORY NOTE.
Protraction of Litigation.
PROVINCIAL INSOLVENCY ACT (III OF 1907).
PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).
Public Body.
PUBLIC DRAIN.
Public Officers.
PUBLIC PATHWAY.
Puisne Mortgage.
Purchase.
Purchase Money.
Purchaser.
Purchaser in Execution.
Putni.
PUTNIDAR.

Quality Mark.
Quarries.

Railway.
Railway Administration.
RAILWAY PASSENGER.
RAILWAYS ACT, 1890.
Rajinama and Kabuliyat.
RATEABLE DISTRIBUTION.
Reasonable Notice.
RECEIVER.
Recitals in Deeds.
Record-of-Rights.
Recoupment.
Rectification of Register.
Redemption.
Redemption Suit.
Reference to High Court.
REFORMATORY SCHOOLS ACT, 1897.
Registration.
Registration Act, 1877.
REGISTRATION ACT, 1908.
Regulation (VIII of 1819).
Release.
RELIGIOUS ENDOWMENT.
RELIGIOUS ENDOWMENTS ACT, 1863.
Religious Office.
Remainder Man.
REMAND.
Rent.
RENT DECREE.
Rent in Kind.
Rent Recovery (Undertenures) Act (Beng.), 1865.
Rent reserved.
Representation.
Representative.
Reserved Rent.
Residence.
RES JUDICATA.
Restoration.
Resumption.
Resumption and Enfranchisement.
Resumption by Government.
Resumption of Muafi.
Resumption of Saranjam.
Revenue Sale Law.
REVERSAL OF JUDGMENT.
Reversioner.
REVIEW.
Revision.
Revision by Single Judge.
Revisional Jurisdiction.
Risk Note.
Rival Decree-holders.
Riwaj-i-am.
Royalties.
Royalty or Seigniorage Fees.
Ryoti Land.

Sale.
Sale by Government.
Sale-deed.
SALE FOR ARREARS OF RENT.
SALE FOR ARREARS OF REVENUE.
SALE IN EXECUTION OF DECREE.
Sale of Goods.
SALE OF IMMOVEABLE PROPERTY.
SANCTION FOR PROSECUTION.
SANTAN.
SARANJAM.

SCHEDULED DISTRICTS ACT, 1874.
SCHOOLMASTER.
SECOND APPEAL.
Security.
Security for good Behaviour.
Security to keep the Peace.
Seigniorage Fees or Royalty.
Senate and Syndicate.
Sentence.
Separate Convictions.
SET-OFF.
Shares of a Limited Company.
Shebait.
Shipowner.
Signature.
Simple Mortgage.
Single Judge.
SMALL CAUSE COURT.
SMALL CAUSE COURT SUIT.
Specific Performance.
SPECIFIC RELIEF ACT, 1877.
STAMP ACT, 1899.
STAMP DUTY.
Statutes.
Statutes, construction of.
Stay of Proceedings.
Straits Settlements Bankruptcy Ordinance.
Street.
Stridhan.
Substitution of Names.
Succession.
SUCCESSION ACT, 1865.
Sudras.
Sufficient Cause.
Suit.
Suits' Valuation Act, 1887.
SURETY.
Syndicate and Senate.

Talabi Brahmottar.
Talabi Ishhad.
Talabi Mowasibat.
Talukdar.
Temple.
Temple Committee.
TENANCY.
TENANCY-AT-WILL.
Tenant.
TENURE.
Termination of Service.
THEATRICAL PERFORMANCE.
THEFT.
TITLE.
TOWNS NUISANCE ACT (MAD.), 1889.
TRADE-NAME, INFRINGEMENT OF.
Trade Usage.
Trading Licenses.
TRADING WITH THE ENEMY.
Transfer.
Transfer of Magistrate.
TRANSFER OF PROPERTY ACT, 1882.
Transferability.
Travelling without Ticket.
TRESPASSER.
Trial.
Trial by Jury.
Tribal Community, Punjab.
Trust.
Trustees.
Trustees and Temple Committees.
Trusts Act, 1882.

Ubayakar.
Ultra vires Rule.
Unchastity.
Under Raiyat.
United Provinces and Oudh Acts.
UNITED PROVINCES EXCISE ACT, 1910.
UNITED PROVINCES LAND REVENUE ACT, 1901.
UNITED PROVINCES MUNICIPALITIES ACT, 1916.
University of Madras.
Unprofessional Conduct.
Usage.
Usage of the Profession.
Usufructuary Mortgage.

VAKIL.
Validity of Wakf.
Valuation of Suit.
Value.
Value of Property.
Vatan.
Vehicle.
VENDOR AND PURCHASER.
Village Chaukidari Act (Beng.).
Vyavahara Mayukha.

WAIVER.
WAJIB-UL-ARZ.
Wakf.
Warrant.
Waste.
Waste Lands.

WASTE LANDS ACT, 1863.
Water.
Water Rights.
Weights and Measures.
Wet Rate.
Widow.
Widow's Estate.
Wife.
Wife's Costs.
WILL.
Winding-up.
Wire Fence.
Withdrawal of Suit.
Women.
Words and Phrases.
Worshippers.
Writ.
Wrongful Acts.

Yati.

Zamindar.
Zamindar or Mittadar.
Zamindaris.

TABLE

OF

CASES IN THE DIGEST.

Name of Case.	Volume and Page.	Column of Digest.
A		
Abdul Aziz *v.* Tasaduq Husain	21 C. W. N. 873	226
Abdul Aziz Bepari *v.* Jogendra Krishna Roy	I. L. R. 44 Calc. 98	167
Abdul Hasan *v.* Makhdum Bakhsh	I. L. R. 39 All. 455	10
Abdul Karim *v.* Emperor	I. L. R. 44 Calc. 737; 21 C. W. N. 925	281
Abdul Khader Sahib *v.* The Official Assignee of Madras	I. L. R. 40 Mad. 810	237
Abdul Latheef *v.* The Official Assignee of Madras	I. L. R. 40 Mad. 1173	158
Abdul Majeeth *v.* Krishnamachariar	I. L. R. 40 Mad. 243	197
Abdul Majid *v.* Bedyadhar Saran Das	I. L. R. 39 All. 101	50
Abul Husain Khan *v.* Prag	21 C. W. N. 582	223
Adikesavan Naidu *v.* Gurunatha Chetti	I. L. R. 40 Mad. 338	80
Advocate, *In re* An	I. L. R. 44 Calc. 741	21
Advocate-General of Bombay *v.* Jimbabai	I. L. R. 41 Bom. 181	101
Adwait Charan Mondal *v.* Krishna Dhone Sarkar	21 C. W. N. 1129	303
Aga Mohammad Shirazi *v.* Syed Mohammad Shoostry	21 C. W. N. 339	82
Ahmad Asmal *v.* Bai Bibi	I. L. R. 41 Bom. 377	201
Ahmad Raza *v.* Saiyid Abid Husain	21 C. W. N. 265	67
Ahmed Ali *v.* Abdul Majid	I. L. R. 44 Calc. 258; 21 C. W. N. 1144.	217
Aiyasamier *v.* Venkatachela Mudali	I. L. R. 40 Mad. 989	45
Ajudhia Prasad *v.* Badr-ul-Husain	I. L. R. 39 All. 489	63
Ajudhia Prasad *v.* Gopi Nath	I. L. R. 39 All. 415	58
Akhil Chandra Saha *v.* Grish Chandra Saha	21 C. W. N. 864	209
Alagappa Ayyangar *v.* Mangathai Ammangar	I. L. R. 40 Mad. 672	132
Ali Asghar *v.* The Collector of Bulandshahr	I. L. R. 39 All. 574	100
Alla *v.* Kuppai	I. L. R. 40 Mad. 752	244
Allahabad Bank, Limited *v.* Mati Lal Barman	I. L. R. 44 Calc. 448	212
Ambalavana Pandara Sannadhi *v.* Secretary of State for India	I. L. R. 40 Mad. 909; L. R. 44 I. A. 186n.	159
Ambar Ali *v.* Lutfe Ali	21 C. W. N. 996	117
Amir *v.* Mahadeo Prasad	I. L. R. 39 All. 225	52
Amir Kazim *v.* Musi Imran	I. L. R. 39 All. 158	194
Amir-ud-din *v.* Khatun Bibi	I. L. R. 39 All. 371	197
Amrita Bazar Patrika, *In the matter of*	21 C. W. N. 1161	74
Amrita Lal Bose *v.* Corporation of Calcutta (F. B.)	I. L. R. 44 Calc. 1025; 21 C. W. N. 1016	284
Amrita Lal Bose *v.* Corporation of Calcutta	21 C. W. N. 1009	38
Anadi Krishna Dutt *v.* Priya Shankar Majumdar	21 C. W. N. 366	60
Ananda Mohan Shaha *v.* Ananda Chandra Naha	I. L. R. 44 Calc. 154	36
Anup Kumar *v.* Kesho Das	I. L. R. 39 All. 547	246

Name of Case.	Volume and Page.	Column of Digest.
Arfan Ali *v.* King-Emperor	I. L. R. 44 Calc. 66	284
Arunachella Ambalam *v.* Orr	I. L. R. 40 Mad. 722	182
Arunachallam Chettiar *v.* Mangalam	I. L. R. 40 Mad. 640	111
Ashgar Ali Khan *v.* Ganesh Dass	L. R. 44 I. A. 213	112
Ashiq Ali *v.* Imtiaz Begam	I. L. R. 39 All. 723	50
Ashna Bibi *v.* Awaljadi Bibi	I. L. R. 44 Calc. 698; 21 C. W. N. 222.	262
Ashraf Ali *v.* King-Emperor	21 C. W. N. 1152	206
Asutosh Goswami *v.* Upendra Prosad Mitra	21 C. W. N. 564	264
Aswini Kumar Samaddar *v.* Banamali Chakravarty	21 C. W. N. 594	118
Atkia Begum *v.* Ibrahim Rashid	21 C. W. N. 345	198

B

Babu Ganesh *v.* Sitaram Martand	I. L. R. 41 Bom. 15	182
Bagala Sundari Debi *v.* Prosunno Nath Mukerjee.	21 C. W. N. 375	84
Bai Laxmi *v.* Maganlal	I. L. R. 41 Bom. 677	134
Bai Raman *v.* Jagjivandas Kashidas	I. L. R. 41 Bom. 618	150
Baid Ram *v.* Tika Ram	I. L. R. 39 All. 300	119
Baji Lal *v.* Nawal Singh	I. L. R. 39 All. 388	62
Bakhtawar Lal *v.* Sheo Prasad	I. L. R. 39 All. 694	60
Balai Lal Mukerjee *v.* Pasupati Chatterjee	21 C. W. N. 127	90
Balakrishna Udayar *v.* Vasudeva Ayyar	I. L. R. 40 Mad. 793; L. R. 44 I. A. 261	259
Balaswamy Ayyar *v.* Venkataswamy Naicken	I. L. R. 40 Mad. 745	144
Balayya *v.* Subbayya	I. L. R. 40 Mad. 1171	219
Balthazar *v.* Balthazar	21 C. W. N. 992	303
Bamandas Bhattacharjee *v.* Nilmadhab Saha	I. L. R. 44 Calc. 771	285
Banga Chandra Dhur Biswas *v.* Jagat Kishore Acharyya Chowdhuri	I. L. R. 44 Calc. 186; 21 C. W. N. 225	140
Bank of Multan, Ltd. *v.* Kamta Prasad	I. L. R. 39 All. 33	187
Banku Chandra Bose *v.* Marium Begum	21 C. W. N. 232	13
Bapu Apaji *v.* Kashinath Sadoba	I. L. R. 41 Bom. 438	290
Barkat Ali *v.* Basant Nunia	21 C. W. N. 175	232
Basanta Kumar Das *v.* Kusum Kumari Dasi	I. L. R. 44 Calc. 28	234
Basanta Kumar Roy *v.* Secretary of State for India	I. L. R. 44 Calc. 858; L. R. 44 I. A. 104; 21 C. W. N. 642	181
Basiruddin Chowdhury *v.* Afsarunessa Bibi	21 C. W. N. 860	20
Basivi Reddi *v.* Ramayya	I. L. R. 40 Mad. 733	185
Beg *v.* Allah Ditta	I. L. R. 44 Calc. 749; L. R. 44 I. A. 89; 21 C. W. N. 842	99
Behari Lal Shaha *v.* Jnanendra Nath Bhuttacharya	21 C. W. N. 921	177
Bejoy Singh Dudhuria *v.* Krishna Behari Biswas	21 C. W. N. 959	2
Beni Prasad *v.* Harnam Das	I. L. R. 39 All. 396	60
Benode Behari Mal *v.* Ganesh Chandra Mistri	21 C. W. N. 434	88
Bhagelu Salu *v.* Ram Autar Shukul	I. L. R. 39 All. 193	122
Bhagwan Dayal *v.* Param Sukh Das	I. L. R. 39 All. 8	52
Bhagwan Dei *v.* Murari Lal	I. L. R. 39 All. 51	76
Bhairon Prasad *v.* Somwarpuri	I. L. R. 39 All. 318	296
Bharat Chandra Nath *v.* Iasin Sarkar	21 C. W. N. 769	122
Bharat Das *v.* Nandrani Kunwar	I. L. R. 39 All. 689	10
Bhirgu Nath Chaube *v.* Narsingh Tiwari	I. L. R. 39 All. 61	141
Bhosai *v.* Aminuddin	21 C. W. N. 371	173

Name of Case.	Volume and Page.	Column of Digest.
Bhubaneshwari Debi *v.* Haradhan Bhattachariya	21 C. W. N. 728	149
Bhusan Ch. Ghosh *v.* Srikanta Banerjee	21 C. W. N. 155	30
Bidhu Mukhi Chowdhurani *v.* Asmatulla	21 C. W. N. 829	30
Bijai Misir *v.* Kali Prasad Misir	I. L. R. 39 All. 469	297
Bijay Chand Mahatap *v.* Iswar Chandra Das	21 C. W. N. 199	8
Bindu Bashini Dasya *v.* Keshab Lal Bose	21 C. W. N. 945	125
Bipin Behari Shaha *v.* Abdul Barik	I. L. R. 44 Calc. 950; 21 C. W. N. 30	274
Biswanath Bhattacharjee *v.* Someswar Sarma	21 C. W. N. 1055	78
Bodlu Bhonja *v.* Mohan Singh	I. L. R. 39 All. 717	43
Bombay and Africa Steam Navigation Co. *v.* Haji Azum.	I. L. R. 41 Bom. 119	39
Bonomally Gupta, *In the matter of*	I. L. R. 44 Calc. 723; 21 C. W. N. 167	166
Brajendra Kishore Roy Chowdhury *v.* Hindustan Co-operative Insurance Society, Ltd.	I. L. R. 44 Calc. 978; 21 C. W. N. 482	239
Brij Indar Singh *v.* Kanshi Ram	L. R. 44 I. A. 218	179
Brown *v.* Ananda Lal Mullick	I. L. R. 44 Calc. 650	269
Budhu Lal *v.* Chattu Gope	I. L. R. 44 Calc. 804, 816; 21 C. W. N. 269, 654	15, 89, 270, 299
C		
Chanbasappa *v.* Kaliandappa	I. L. R. 41 Bom. 728	188
Chandra Kanta Bhattacharjee *v.* Lakshman Chandra Chakravarty	21 C. W. N. 430	14, 62
Chandra Kishore Ray *v.* King-Emperor	21 C. W. N. 755	95
Chandra Kumar Ghose *v.* Mahendra Kumar Ghose	I. L. R. 44 Calc. 711; 21 C. W. N. 549	193
Chandulal Dalsukhram *v.* Jeshangbhai Chhotalal	I. L. R. 41 Bom. 402	61
Charu Chandra Majumdar *v.* King-Emperor	I. L. R. 44 Calc. 595; 21 C. W. N. 320	166
Charu Chandra Mazumdar, *In re*	I. L. R. 44 Calc. 76	133
Cheda Lal *v.* Lachman Prasad	I. L. R. 39 All. 267	248
Chedi Lal *v.* Saadat-un-nissa Bibi	I. L. R. 39 All. 36	61
Chengadu, *Re*	I. L. R. 40 Mad. 789	97
Chhakmal Chopra *v.* King-Emperor	I. L. R. 44 Calc. 321; 21 C. W. N. 248	277
Chhatrapat Singh Dugar *v.* Kharag Singh Lachmiram	I. L. R. 44 Calc. 535; L. R. 44 I. A. 11; 21 C. W. N. 497	158
Chhiddu *v.* Sheo Mangal Singh	I. L. R. 39 All. 186	220
Chhotalal Aditram *v.* Bai Mahakore	I. L. R. 41 Bom. 466	119
Chidambaram Chettiar *v.* Ayyasawmi Thevan	I. L. R. 40 Mad. 585	223
Chidambaram Chettiar *v.* Krishna Vathiyar	I. L. R. 40 Mad. 233	124
Chidda Lal *v.* Bhajan Lal	I. L. R. 39 All. 657	89
Chinnu Pillai *v.* Venkatasamy Chettiar	I. L. R. 40 Mad. 77	292
Chunnoo Lal *v.* Lachman Sonar	I. L. R. 39 All. 391	246
Chutterput Singh *v.* Sadasook Kotary	21 C. W. N. 1052	126
D		
Dadasaheb Dasrathrao *v.* Bai Nahani	I. L. R. 41 Bom. 480	120

Name of Case.	Volume and Page.	Column of Digest.
Dal Singh *v.* King-Emperor	I. L. R. 44 Calc. 876; L. R. 44 I. A. 137; 21 C. W. N. 818	241
Dalip Singh *v.* Nawal	I. L. R. 39 All. 297	296
Dawal Piranshah *v.* Dharma Rajaram	I. L. R. 41 Bom. 550	291
Debi Saran Shukul *v.* Daulata Shuklain	I. L. R. 39 All. 234	147
Deo Nandan Prashad *v.* Janki Singh	I. L. R. 44 Calc. 573; L. R. 44 I. A. 30; 21 C. W. N. 473	14, 267
Deonandan Prashad Singh *v.* Ramdhari Chowdhri	I. L. R. 44 Calc. 675; L. R. 44 I. A. 80; 21 C. W. N. 786	235
Devare Hegde *v.* Vaikunt Subaya	I. L. R. 41 Bom. 475	46
Dhananjoy Bhunjo *v.* Nimai Chand Das	21 C. W. N. 1134	130
Dhandei Kunwar *v.* Chotu Lal	I. L. R. 39 All. 254	50
Dharanidhar Aditya *v.* Hemanga Chandra Jana	21 C. W. N. 1087	126
Dhondi bin Ranoji *v.* Revappa Satappa	I. L. R. 41 Bom. 453	104
Dhurabhai Bhuldas *v.* Mohanlal Maganlal	I. L. R. 41 Bom. 458	257
Diwakar Rao *v.* Chandanlal Rao	I. L. R. 44 Calc. 201; 21 C. W. N. 314	136
Doraisami Padayachi *v.* Vaithilinga Padayachi	I. L. R. 40 Mad. 31	77
Dudekula Lal Sahib, *Re*	I. L. R. 40 Mad. 976	91
Dulla *v.* Shib Lal	I. L. R. 39 All. 47	45
Durga Das Khan *v.* Ishan Chandra Dey	I. L. R. 44 Calc. 145	112
Durgapada Panja *v.* Bhusan Chandra Ghosh	21 C. W. N. 373	31
Durga Prasanna Roy *v.* Ishan Chandra Shaha	I. L. R. 44 Calc. 800	64
Dwarka Nath Chaudhuri *v.* Tafazar Rahaman Sarkar	I. L. R. 44 Calc. 267	219
Dwarka Nath Dey *v.* Sailoja Kanta Mullick	21 C. W. N. 1150	84
Dwarka Nath Roy Chowdhury *v.* Mathura Nath Roy Chowdhury	21 C. W. N. 117	173
Dwijendra Nath Ray Chaudhuri *v.* Aftabuddi Sardar	21 C. W. N. 492	28, 172

E

East Indian Railway Company *v.* Nathmal Behari Lal	I. L. R. 39 All. 418	74
Ejaz Ahmad *v.* Khatun Begam	I. L. R. 39 All. 288	201
Emperor *v.* Abdul Aziz	I. L. R. 39 All. 141	256
Emperor *v.* Asharfi Lal	I. L. R. 39 All. 91	91
Emperor *v.* Bhola	I. L. R. 39 All. 549	95
Emperor *v.* Chhotey Lal	I. L. R. 39 All. 367	96
Emperor *v.* Cripps	I. L. R. 41 Bom. 152	228
Emperor *v.* Fateh Chand Agarwalla	I. L. R. 44 Calc. 477; 21 C. W. N. 33	82
Emperor *v.* Ghasi	I. L. R. 39 All. 722	228
Emperor *v.* Hashim Ali	I. L. R. 39 All. 482	297
Emperor *v.* Husain Khan	I. L. R. 39 All. 293	94
Emperor *v.* Ibrahim Meer Shikari	I. L. R. 41 Bom. 654	238
Emperor *v.* Ikram-ud-din	I. L. R. 39 All. 348	93
Emperor *v.* Jeoli	I. L. R. 39 All. 161	227
Emperor *v.* Kallianji	I. L. R. 41 Bom. 741	35
Emperor *v.* Katwaru Rai	I. L. R. 39 All. 623	226
Emperor *v.* Khiali	I. L. R. 39 All. 305	92

Name of Case.	Volume and Page.	Column of Digest.
Emperor *v.* Kikabhai	I. L. R. 41 Bom. 464	34
Emperor *v.* Krishna Lal	I. L. R. 39 All. 131	231
Emperor *v.* Latif	I. L. R. 39 All. 123	228
Emperor *v.* Lobo	I. L. R. 41 Bom. 47	95
Emperor *v.* Mahomed Nathu	I. L. R. 41 Bom. 149	35
Emperor *v.* Manuel Philip	I. L. R. 41 Bom. 667	88
Emperor *v.* Mathura Prasad	I. L. R. 39 All. 715	227
Emperor *v.* Muhammad Yusuf	I. L. R. 39 All. 386	297
Emperor *v.* Munna	I. L. R. 39 All. 139	85
Emperor *v.* Nazar Mahomed	I. L. R. 41 Bom. 657	271
Emperor *v.* Piari Lal	I. L. R. 39 All. 309	298
Emperor *v.* Ranchodlal	I. L. R. 41 Bom. 563	34
Emperor *v.* Sardarkhan	I. L. R. 41 Bom. 27	227
Emperor *v.* Satish Chandra Ghosh	I. L. R. 39 All. 412	66
Emperor *v.* Sita Ram	I. L. R. 39 All. 466	86
Emperor *v.* Umar Khan	I. L. R. 39 All. 399	92
Emperor *v.* Yakub Ali	I. L. R. 39 All. 273	116
F		
Fakir Chand *v.* Babu Lal	I. L. R. 39 All. 719	293
Fani Bhusan Sarkar *v.* Pulin Chandra Mandal	21 C. W. N. 976	32
Faredoon Cawasji, *In re*	I. L. R. 41 Bom. 560	95
G		
Gajadhar Singh *v.* Kishan Jiwan Lal	I. L. R. 39 All. 641	60
Gajraj Mati Tiwarin *v.* Swami Nath Rai	I. L. R. 39 All. 13	57
Galstaun *v.* Woomes Chandra Bonnerjee	I. L. R. 44 Calc. 789	254
Ganesh Krishna *v.* Damoo	I. L. R. 41 Bom. 64	42
Ganesh Narayan *v.* Gopal Vishnu	I. L. R. 41 Bom. 357	216
Ganesh Vinayak *v.* Sitabai	I. L. R. 41 Bom. 159	156
Ganga Prasad *v.* Hira Lal	I. L. R. 39 All. 86	219
Gangadara *v.* Sambasiva	I. L. R. 40 Mad. 759	258
Gauranga Sahu *v.* Sudevi Mata	I. L. R. 40 Mad. 612	259
Gaya Din *v.* Sri Ram	I. L. R. 39 All. 364	219
Ghuznavi *v.* The Allahabad Bank, Ltd.	I. L. R. 44 Calc. 929; 21 C. W. N. 877.	260
Giridhari Lal Serowgee *v.* King-Emperor	21 C. W. N. 950	96
Giridhari Singh *v.* Megh Lal Pandey	L. R. 44 I. A. 246	203
Golapdi Meah *v.* Purna Chandra Dutta	21 C. W. N. 774	222
Gopalam *v.* Venkataraghavulu	I. L. R. 40 Mad. 632	148
Gour Gopal Sinha *v.* Gosta Behary Pramanik	21 C. W. N. 214	251
Govind Bhikaji *v.* Bhau Gopal	I. L. R. 41 Bom. 384	292
Govind Das *v.* Bishambhar Das	I. L. R. 39 All. 561; L. R. 44 I. A. 192; 21 C. W. N. 1113	178
Gulabchand Balaram *v.* Narayan	I. L. R. 41 Bom. 31	187
Gunendra Mohan Ghosh *v.* Corporation of Calcutta	I. L. R. 44 Calc. 689; 21 C. W. N. 234	250
Gunjeshwar Kunwar *v.* Durga Prasad Singh	L. R. 44 I. A. 22.	148
Gururao Shrinivas *v.* Secretary of State for India	I. L. R. 41 Bom. 408	271

Name of Case.	Volume and Page.	Column of Digest.
H		
Hajra Sardara *v.* Kunja Behari Nag	21 C. W. N. 1001	8
Har Chandi Lal *v.* Sheoraj Singh	I. L. R. 39 All. 178; L. R. 44 I. A. 60; 21 C. W. N. 765	212
Haridas Dutta *v.* Baidya Nath Ghose	21 C. W. N. 895	16
Haripada Rakshit, *In re*	I. L. R. 44 Calc. 374	158
Hari Prasanna Mukherjee, *Re*	21 C. W. N. 516	176
Hay *v.* Ram Chandar	I. L. R. 39 All. 308	46
Hem Chandra Biswas *v.* Purna Chandra Mukherji	I. L. R. 44 Calc. 567	181
Hira Devi *v.* Digbijay Singh	21 C. W. N. 1137	175
Hooper *v.* King-Emperor	I. L. R. 40 Mad. 34	288
Hrishikesh Mandal *v.* Abadhaut Mandal	I. L. R. 44 Calc. 703; 21 C. W. N. 250	4
Hukumat Rai *v.* Padam Narain	I. L. R. 39 All. 353	245
Hummi *v.* Aziz-ud-din	I. L. R. 39 All. 143	57
Hunai Sheikh *v.* Sarat Chandra Dutt	21 C. W. N. 749	261
I		
Ibrahim Bhura *v.* Isa Rasul	I. L. R. 41 Bom. 5	70
Ibrahim Muhamud *v.* King-Emperor	21 C. W. N. 694	117
Ilias Ahmad *v.* Bulaqi Chand	I. L. R. 39 All. 672	224
Imam valad Ibrahim *v.* Bhau Appaji	I. L. R. 41 Bom. 510	256
Isap Ahmed *v.* Abhramji Ahmadji	I. L. R. 41 Bom. 588	189
Iyappa Nainar *v.* Manicka Asari	I. L. R. 40 Mad. 630	247
Izzat Ali *v.* Muhammad Sharafat-ullah Khan	I. L. R. 39 All. 516	163
J		
Jadab Sardar *v.* Gobinda Chandra Mandal	I. L. R. 44 Calc. 272; 21 C. W. N. 363.	221
Jadav Chandra Sarkar *v.* Kailash Chandra Singh	21 C. W. N. 693	263
Jadu Nath Singh *v.* Thakur Sita Ramji	I. L. R. 39 All. 553; L. R. 44 I. A. 187; 21 C. W. N. 953	142
Jagabandhu Shaha *v.* Magnamoyi Dassee	I. L. R. 44 Calc. 555	24
Jagannath Panja *v.* Mahesh Chandra Pal	21 C. W. N. 688	131
Jagat Bijoy Bhattacharjee *v.* Tomijuddi Howlada	I. L. R. 44 Calc. 181	303
Jagrup Sahu *v.* Ramanand Sahu	I. L. R. 39 All. 633	245
Jamna Dei *v.* Lala Ram	I. L. R. 39 All. 74	189
Jayanuddin Khan *v.* Jamiruddin Sarkar	21 C. W. N. 835	123
Jaykrishna Samanta *v.* King-Emperor	21 C. W. N. 95	229
Jekisondas Harkisondas *v.* Ranchoddas Bhagvandas	I. L. R. 41 Bom. 137	101
Jewa Nathoo and Others, *In re*	I. L. R. 44 Calc. 459	133
Jhabha Lal *v.* Shib Charan Das	I. L. R. 39 All. 152	246
Jhamplu *v.* Kutramani	I. L. R. 39 All. 696	115
Jhunku Lal *v.* Piari Lal	I. L. R. 39 All. 204	244
Jivraj Dhanji, *In re*	I. L. R. 41 Bom. 580	35
Jogendra Mohan Das *v.* Janaki Nath Saha	21 C. W. N. 427	28
Jogi Das *v.* Ganga Ram	21 C. W. N. 957	140
Jolly *v.* Jolly	21 C. W. N. 872	97

Name of Case.	Volume and Page.	Column of Digest.
Joseph *v.* Corporation of Calcutta	I. L. R. 44 Calc. 87; 21 C. W. N. 194	67
Juman Sheik *v.* Mohammad Nobineoaz	21 C. W. N. 1149	291
K		
Kabbat Ali *v.* King-Emperor	21 C. W. N. 550	93
Kailash Chandra Datta *v.* Padmakisore Roy	21 C. W. N. 972	272
Kailash Chandra Samaddar *v.* Rebati Mohan Ray Chowdhury	21 C. W. N. 652	177
Kala Chand Shaha *v.* Secretary of State for India	21 C. W. N. 751	254
Kalandar Mandal *v.* Ajimoddi Mandal	21 C. W. N. 599	108
Kali Das Mullick *v.* East Indian Railway Company	21 C. W. N. 815	108
Kalipada Sarkar *v.* Hari Mohan Dalal	I. L. R. 44 Calc. 627; 21 C. W. N. 1104	104
Kali Prasanna Sil *v.* Panchanan Nandi	I. L. R. 44 Calc. 367	164
Kamala Devi *v.* Gur Dayal	I. L. R. 39 All. 58	77
Kamayya *v.* Papayya	I. L. R. 40 Mad. 259	59
Kamr-un-nissa Bibi *v.* Sughra Bibi	I. L. R. 39 All. 480	234
Kamta *v.* Parbhu Dayal	I. L. R. 39 All. 165	62
Kandu Kuri Balasurya Row *v.* Secretary of State for India	L. R. 44 I. A. 166; 21 C. W. N. 1089	196
Kannayya Chetti *v.* Venkata Narasayya	I. L. R. 40 Mad. 1	14
Karali Prasad Guru *v.* King-Emperor	I. L. R. 44 Calc. 358	195
Kasim Ali *v.* Chittagong Municipality	21 C. W. N. 601	13
Kawal Nain *v.* Budh Singh.	I. L. R. 39 All. 496; L. R. 44 I. A. 159; 21 C. W. N. 986	148
Kedar Nath Dey *v.* Lakhi Kanto Dey	21 C. W. N. 868	191
Keramat Ali *v.* Nogendra Kishore Ray	21 C. W. N. 571	122
Kesho Prosad Singh *v.* Sarwan Lal	21 C. W. N. 591	186
Ketokey Churn Banerjee *v.* Sarat Kumari Debi	21 C. W. N. 826	52
Keymer *v.* Visvanatham Reddi	I. L. R. 40 Mad. 112; L. R. 44 I. A. 6; 21 C. W. N. 358	44
Khawani Singh *v.* Chet Ram	I. L. R. 39 All. 1	151
Khedu Rai *v.* Sheo Parson Rai	I. L. R. 39 All. 423	213
Khohua Moran *v.* King-Emperor	21 C. W. N. 608	85
Khushali Ram *v.* Gokul Chand	I. L. R. 39 All. 607	44
King-Emperor *v.* Annada Charan Ray	21 C. W. N. 435	91
King-Emperor *v.* Musa	I. L. R. 40 Mad. 556	285
Kissory Mohan Roy, *In re*	I. L. R 44 Calc. 286	157
Kolandaivelu, *In re*	I. L. R. 40 Mad. 1030	41
Krishna Chandra Ghosh *v.* Rasik Lal Khan	21 C. W. N. 218	288
Krishna Charan Barman *v.* Sanat Kumar Das	I. L. R. 44 Calc. 162	229
Krishna Kerring & Co. *v.* Miller	I. L. R. 41 Bom. 631	90
Krishna Kumar Nandy *v.* Jai Krishna Nandy	21 C. W. N. 401	290
Krishna Nath Chuckerbutty *v.* Mahomed Wafiz	21 C. W. N. 93	294
Krishna Row *v.* Madras Municipal Corporation	I. L. R. 40 Mad. 545	196
Krishna Sah *v.* The Collector of Bareilly	I. L. R. 39 All. 534	170
Krishnaiyah *v.* Gajendra Naidu	I. L. R. 40 Mad. 1127	192
Krishnappa *v.* Periyaswamy	I. L. R. 40 Mad. 964	45
Kshetra Nath Banerjee *v.* Kali Dasi Dasi	21 C. W. N. 784	274
Kullappa Goudan *v.* Abdul Rahim Sahib	I. L. R. 40 Mad. 824	84
Kulsum Fatima *v.* Ali Akbar	I. L. R. 39 All. 401	63

Name of Case.	Volume and Page.	Column of Digest.
Kumud Krishna Mandal *v.* Jogendra Nath Sarkar	21 C. W. N. 854	153, 270
Kundan Singh *v.* Surja Kunwar	I. L. R. 39 All. 67	214
Kurgodigouda *v.* Ningangouda	I. L. R. 41 Bom. 625	51
L		
Lachman Das *v.* Ahmad Hasan	I. L. R. 39 All. 357	248
Lachman Prasad *v.* Sarnam Singh	I. L. R. 39 All. 500; 21 C. W. N. 990	140
Lachmi Narain *v.* Sajjadi Begam	I. L. R. 39 All. 700	213
Lachmi Narain *v.* Sarju Prasad	I. L. R. 39 All. 230	192
Ladu Ram *v.* Mahabir Prasad	I. L. R. 39 All. 171	247
Lakhpat Rai *v.* Fakhr-ud-din	I. L. R. 39 All. 536	293
Lalta Prasad *v.* Sheoraj Singh	I. L. R. 39 All. 452	83
Laxmibai *v.* Hussainbhai	I. L. R. 41 Bom. 719	64
Laxminarayan *v.* Chimniram Girdharilal	I. L. R. 41 Bom. 89	55
Laxmipatirao *v.* Venkatesh	I. L. R. 41 Bom. 315	136
Linotype and Machinery, Ltd., and the Windsor Press of Calcutta, *In re*	I. L. R. 44 Calc. 72	153
Lolit Mohun Chakraburty *v.* Harendra Kumar Dey	21 C. W. N. 1135	108
M		
Madan Gopal *v.* Sati Prasad	I. L. R. 39 All. 485	140
Madan Mohan Dey *v.* Nogendra Nath Dey	21 C. W. N. 544	83
Madan Mohan Dey *v.* Rebati Mohan Poddar	21 C. W. N. 158	47
Madan Mohan Singh *v.* Raj Kishori Kumari	21 C. W. N. 88	192
Madhav Ganpatprasad *v.* Majidkhan	I. L. R. 41 Bom. 737	34
Madhavji Dharamsey Manufacturing Co. *v.* The Central India Spinning Weaving and Manufacturing Co.	I. L. R. 41 Bom. 49	286
Madhoram Hurdeo Das *v.* G. C. Sett	21 C. W. N. 670	78
Madhu Sudan Chowdhri *v.* Chandrabati Chowdhrain	21 C. W. N. 897	125
Madhuri Surendra Sahi *v.* Bithal Das	I. L. R. 39 All. 450	57
Mahamandal Shashtra Prakashak Samity, Ltd., Benares, *In the matter of the*	I. L. R. 39 All. 334	65
Mahammad Umar *v.* Man Kuar	21 C. W. N. 906	69
Mahim Chandra Chowdhury *v.* Piyari Lal Das	I. L. R. 44 Calc. 412; 21 C. W. N. 537	268
Mahomed Haji Essack *v.* Abdul Rahiman	I. L. R. 41 Bom. 312	237
Makbul Ali *v.* Jogesh Chandra Ray	21 C. W. N. 534	29
Malchand *v.* Gopal Chandra Ghosal	I. L. R. 44 Calc. 899; 21 C. W. N. 298	157
Malik Akbar Ali Khan *v.* Shah Muhammad	I. L. R. 39 All. 621	108
Manasharam Das *v.* Ahmed Hossein Prodhan	21 C. W. N. 63	209
Mangali Lal *v.* Abid Yar Khan	I. L. R. 39 All. 523	257
Manilal Brijlal *v.* The Gordhan Spinning and Manufacturing Co.	I. L. R. 41 Bom. 76	65
Manindra Chandra Nandy *v.* Durga Prasad Singh	21 C. W. N. 707	203
Manindra Nath Ghosh *v.* Ashutosh Ghosh	21 C. W. N. 1132	261
Manmatha Nath Mitter *v.* District Judge, 24-Parganas	I. L. R. 44 Calc. 715	266
Markur, *In re*	I. L. R. 41 Bom. 1	115
Mathura Nath *v.* Cheddu	I. L. R. 39 All. 355	188

Name of Case.	Volume and Page.	Column of Digest.
Matukdhari Singh *v.* Jaisri	I. L. R. 39 All. 612	87
Mauladad Khan *v.* Abdul Sattar	I. L. R. 39 All. 426	118
Maung Kyin *v.* Ma Shwe La	L. R. 44 I. A. 236	114
Maung Shwe Goh *v.* Maung Inn	I. L. R. 44 Calc. 542; L. R. 44 I. A. 15; 21 C. W. N. 500	210
Maung Tun Tha *v.* Ma Thit	I. L. R. 44 Calc. 379; L. R. 44 I. A. 42; 21 C. W. N. 527	37
Meajan Matbar *v.* Alimuddi Mia	I. L. R. 44 Calc. 130	114
Miyajan Bhuiyan *v.* Srimati Joymala	21 C. W. N. 546	29
Midnapur Zemindary Company, Ltd. *v.* Secretary of State for India	I. L. R. 44 Calc. 352; 21 C. W. N. 834	83
Mina Kumari Bibi *v.* Bijoy Singh Dudhuria	I. L. R. 44 Calc. 662; L. R. 44 I. A. 72; 21 C. W. N. 585	19
Mohamed Siddiq *v.* Durga Prosad	21 C. W. N. 342	31
Mohammed Hosain *v.* Farley	I. L. R. 44 Calc. 279	252
Mohammed Soleman *v.* Raghunath Dutt	21 C. W. N. 425	22
Mohan Lal *v.* Indomati	I. L. R. 39 All. 244	291
Moti Chand *v.* Ikram-Ullah Khan	I. L. R. 39 All. 173; L. R. 44 I. A. 54; 21 C. W. N. 616	10
Moti Lal *v.* Ram Narain	I. L. R. 39 All. 551	59
Moti Raiji *v.* Laldas Jebhai	I. L. R. 41 Bom. 93	151
Motibhai Jijibhai *v.* Desaibhai Gokalbhai	I. L. R. 41 Bom. 170	174
Moti Lal *v.* Ganapatram	21 C. W. N. 936	247
Motishaw & Co. *v.* The Mercantile Bank of India.	I. L. R. 41 Bom. 566	33
Muchi Mian *v.* King-Emperor	21 C. W. N. 1062	227
Muhammad Ahmad Said Khan *v.* Madho Prasad	I. L. R. 39 All. 133	235
Muhammad Habib-ullah *v.* Mushtaq Husain	I. L. R. 39 All. 95	246
Muhammad Zakariya *v.* Muhammad Hafiz	I. L. R. 39 All. 506	55
Municipal Corporation of City of Bombay *v.* G. I. P. Railway Co.	I. L. R. 41 Bom. 291; 21 C. W. N. 447	253
Munsar Ali *v.* Abhoya Charan Das	21 C. W. N. 1147	182, 273
Murtaza Husain Khan *v.* Mahomed Yasin Ali Khan	21 C. W. N. 410	300
Murugesam Pillai *v.* Manickavasaka Pandara Sannadhi	I. L. R. 40 Mad. 402; L. R. 44 I. A. 98; 21 C. W. N. 761	115, 142
Muthuswami Ayyar *v.* Kalyani Ammal	I. L. R. 40 Mad. 818	145
Muthuveerappa Chetty *v.* Ramaswami Chetty	I. L. R. 40 Mad. 285	79
Mylapore Permanent Benefit Fund, Ltd. *v.* Arogiaswami Pillay	I. L. R. 40 Mad. 1004	273

N

Nabo Kumar Chuckerbutty *v.* Abdul Jubbur Miyan	21 C. W. N. 112	26
Nadathi, *Re*	I. L. R. 40 Mad. 880	258
Nakimo Dewani *v.* Pemba Ditchen	I. L. R. 44 Calc. 829	67
Nalini Kanta Laha *v.* Anukul Chandra Laha	I. L. R. 44 Calc. 1002; 21 C. W. N. 640	270
Nallavadiva Ammal *v.* Subramania Pillai	I. L. R. 40 Mad. 687	15
Nanda Narayan Newar *v.* Manmaya Kamini	21 C. W. N. 344	93
Nandi *v.* Sarup Lal	I. L. R. 39 All. 463	150
Nannu Lal *v.* Bhagwan Das	I. L. R. 39 All. 114	58

Name of Case.	Volume and Page.	Column of Digest.
Narain Prasad *v.* Sarnam Singh	L. R. 44 I. A. 163	147
Narayanan *v.* Veerappa	I. L. R. 40 Mad. 581	20
Narayani *v.* Nabin Chandra Chaudhuri	I. L. R. 44 Calc. 720; 21 C. W. N. 400	222
Naro Gopal *v.* Paragauda	I. L. R. 41 Bom. 347	146
Narottam Das *v.* Kedar Nath Samanta	21 C. W. N. 665	223
Nasiruddin Sarkar *v.* Gofuruddin Mahamed	21 C. W. N. 160	86
Natesa *v.* Ganapathia	I. L. R. 40 Mad. 949	191
Natesan, G. A. and K. B. Ramanathan, *In the matter of*	I. L. R. 40 Mad. 125	276
Nauni Lal Singh *v.* Ram Ratan	I. L. R. 39 All. 127	234
Navaneetha Krishna Thevar *v.* Ramaswami Pandia Thalavar	I. L. R. 40 Mad. 871	149
Nawab Bahadur of Murshidabad *v.* Ahmad Hossein	I. L. R. 44 Calc. 783; 21 C. W. N. 1004	28
Nibaran Chandra Chakrabartty *v.* Akshoy Kumar Banerjee	21 C. W. N. 948	90
Niwajkhan Nathankhan *v.* Dadabhai	I. L. R. 41 Bom. 166	184
Nobin Chandra Aich *v.* Noakhali Municipality	21 C. W. N. 470	23
Nobin Chandra Barua *v.* Chandra Madhab Barua	I. L. R. 44 Calc. 1; 21 C. W. N. 97	3
Nripendra Nath Ray *v.* Birendra Nath Roy	21 C. W. N. 939	54
Nundo Lal Mullick *v.* Punchanan Mukerjee	21 C. W. N. 1076	265
Nuri Mian *v.* Ambica Singh	I. L. R. 44 Calc. 47	199

O

Official Assignee of Madras, The *v.* Mangayarkarasu Ammal	I. L. R. 40 Mad. 1173	158

P

Pachan Singh *v.* Jangjit Singh	I. L. R. 39 All. 166	269
Padgett *v.* Jamshetji Hormusji	I. L. R. 41 Bom. 390	81
Palaniappa Chetty *v.* Devasikamony Pandara Sannadhi	I. L. R. 40 Mad. 709; L. R. 44 I. A. 147; 21 C. W. N. 729	144
Palaniappa Chetty *v.* Palaniappa Chetty	I. L. R. 40 Mad. 18	255
Palikandy Mammad *v.* Krishnan Nair	I. L. R. 40 Mad. 302	46
Palmer *v.* Palmer	I. L. R. 41 Bom. 36	107
Panchkore Ghosh *v.* Haridas Jati	21 C. W. N. 394	79
Pankajammal *v.* Secretary of State for India	I. L. R. 40 Mad. 1108	141
Parameswaran Munpee *v.* Narayanan Nambodri	I. L. R. 40 Mad. 110	49
Parasullah Mullik *v.* Chandra Kanta Das	21 C. W. N. 979	77
Parshottam Veribhai *v.* Chhatrasangji	I. L. R. 41 Bom. 546	36
Patra Chariar *v.* Srinivasa Chariar	I. L. R. 40 Mad. 1122	145
Perumal Pillai *v.* Raman Chettiar	I. L. R. 40 Mad. 968	212
Pethu Ayyar *v.* Sankaranarayana Pillai	I. L. R. 40 Mad. 955	289
Piari Lal *v.* Madan Lal	I. L. R. 39 All. 191	49
Pichu Vadhiar *v.* Secretary of State for India	I. L. R. 40 Mad. 767	293
Pierce Leslie *v.* Perumal	I. L. R. 40 Mad. 1069	122
Piran Bibi *v.* Jitendra Mohan Mukerjee	21 C. W. N. 920	215
Pita Ram *v.* Jujhar Singh	I. L. R. 39 All. 626	43

Name of Case.	Volume and Page.	Column of Digest.
Prafulla Kumar Ghose *v.* Harendra Nath Chatterjee	I. L. R. 44 Calc. 970; 21 C. W. N. 253	270
Prafulla Nath Tagore *v.* J. Hudding	21 C. W. N. 1059	87
Pran Krishna Das *v.* Pratap Chandra Daloi	21 C. W. N. 423	191
Pran Krishna Saha *v.* Kripa Nath Choudhury	21 C. W. N. 209	29
Prasad Row *v.* Secretary of State for India	I. L. R. 40 Mad. 886	161
Prem Lal Dhar, *Re*	I. L. R. 44 Calc. 1016	157
Priya Sakhi Debi *v.* Manbodh Bibi	I. L. R. 44 Calc. 425; 21 C. W. N. 177	8
Prodyot Kumar Tagore *v.* Sarat Chandra Das	21 C. W. N. 809	283
Promotha Nath Ray *v.* Kishore Lal Shaha	21 C. W. N. 304	183, 231
Punniah *v.* Kotamma	I. L. R. 40 Mad. 939	38
Puran Mal *v.* Birj Lal	I. L. R. 39 All. 651	224
Purna Chandra Chabri *v.* Tara Proshad Maity	21 C. W. N. 870	60
Pyari Mohan Kundu *v.* Kalu Khan	I. L. R. 44 Calc. 1011	264

R

Radhakrishna *v.* Subraya	I. L. R. 40 Mad. 550	280
Radha Shyam Basak *v.* Secretary of State for India	I. L. R. 44 Calc. 16	193
Radhika Nath Ray *v.* Samir Fakir	21 C. W. N. 636	25
Raghava Chariar *v.* Srinivasa Raghava Chariar	I. L. R. 40 Mad. 308	204
Raghavendra Raoji *v.* Yalgurad Ramchandra	I. L. R. 41 Bom. 163	56
Raghubir Rai *v.* Madho	I. L. R. 39 All. 605	9
Rahman Sahib *v.* Vellabji	I. L. R. 40 Mad. 835	88
Raimohan Karmakar *v.* King-Emperor	I. L. R. 44 Calc. 61	250
Raj Kumar Deoty *v.* Satish Chandra Ghosh	21 C. W. N. 753	89
Raja of Cochin *v.* Kittunni Nair	I. L. R. 40 Mad. 603	202
Raja Rajeswari Ammal *v.* Subramania Archakar	I. L. R. 40 Mad. 105	150
Rajani Kanta Kapali *v.* Kali Mohan Das	21 C. W. N. 217	182
Rajani Kanta Mondal *v.* Haji Lal Mahomed	21 C. W. N. 628	79
Rajani Kantha Mukerjee *v.* Yusuf Ali	21 C. W. N. 188	220, 282
Rajendra Kishore Singh *v.* Bhagwan Singh	I. L. R. 39 All. 460	190
Rajendra Lal Sur *v.* Atal Bihari Sur	I. L. R. 44 Calc. 454	165
Rajendra Prasad *v.* Ram Jatan Rai	I. L. R. 39 All. 539	214
Rajeshwar Bagchi *v.* King-Emperor	21 C. W. N. 758	277
Rajkumar Kusari *v.* King-Emperor	21 C. W. N. 840	65
Ram Chandar *v.* Ganga Saran	I. L. R. 39 All. 103	275
Ram Chandra Misra *v.* Ganesh Chandra Gangopadhya	21 C. W. N. 404	76
Ram Das Singh *v.* King-Emperor	21 C. W. N. 469	238
Ram Dei *v.* Munna Lal	I. L. R. 39 All. 109	119
Ram Mondal *v.* Chandra Mandal	21 C. W. N. 926	86
Ram Nandan Dhar Dube *v.* Kaniz Fatima Bibi	I. L. R. 39 All. 379	262
Ram Narain *v.* Brij Banke Lal	I. L. R. 39 All. 322	185
Ram Narayan Singh *v.* Adhindra Nath Mukherji	I. L. R. 44 Calc. 388; L. R. 44 I. A. 87; 21 C. W. N. 383	215
Ram Piari *v.* Nand Lal	I. L. R. 39 All. 636	184
Ram Prosad Pramanik *v.* Sri Charan Mandal	21 C. W. N. 1109	249
Ram Ratan Sukul *v.* King-Emperor	21 C. W. N. 1111	90
Ram Sarup *v.* Harpal	I. L. R. 39 All. 200	187
Ramalingam, *Re*	I. L. R. 40 Mad. 100	97
Ramamurthy *v.* Gopayya	I. L. R. 40 Mad. 701	183
Raman Lalji *v.* Gokul Nathji	I. L. R. 39 All. 343	234

Name of Case.	Volume and Page.	Column of Digest.
Ramanandan Chettiar *v.* Vava Levvai Marakayar	I. L. R. 40 Mad. 116; L. R. 44 I. A. 21; 21 C. W. N. 521	201
Ramanath Gagoi *v.* Pitambar Deb Goswami	21 C. W. N. 632	225
Ramanathan *v.* Ranganathan	I. L. R. 40 Mad. 1134	113
Rama Row *v.* Kuttiya Goundan	I. L. R. 40 Mad. 654	145
Ramayya *v.* Krishnamurti	I. L. R. 40 Mad. 296	58
Ramendra Nath Ray *v.* Brojendra Nath Das	21 C. W. N. 794	53, 70, 206
Ramjas *v.* Mahadeo Prasad	I. L. R. 39 All. 147	88
Ramji Lal *v.* Karan Singh	I. L. R. 39 All. 532	57
Ramkrishna Yeshwant *v.* The President of the Vengurla Municipality	I. L. R. 41 Bom. 367	248
Rangayya Reddy *v.* Subramania Ayyar	I. L. R. 40 Mad. 365	53
Ranjit Singh *v.* Kali Dasi Debi	I. L. R. 44 Calc. 841; L. R. 44 I. A. 117; 21 C. W. N. 609	41
Raoji Fakira *v.* Dagdu	I. L. R. 41 Bom. 23	134
Rasik Lal Mullick, *In re*	21 C. W. N. 106	19
Rasik Lal Nag, *In re*	I. L. R. 44 Calc. 639	243
Ratan Dei *v.* Durga Shankar Bajpai	I. L. R. 39 All. 645	220
Ratna Mudali *v.* King-Emperor	I. L. R. 40 Mad. 1028	85
Rayarappa Atioti *v.* Kelappa Kurup	I. L. R. 40 Mad. 594	202
Raza *v.* Ali	I. L. R. 40 Mad. 941	109
Regina Guha, *In re*	I. L. R. 44 Calc. 290; 21 C. W. N. 74	230
Reiffsteck *v.* Reiffsteck	I. L. R. 39 All. 377	48
Rifaqat Husain *v.* Bibi Tawaif	I. L. R. 39 All. 393	42
Roderiques *v.* Ramaswami Chettiar	I. L. R. 40 Mad. 783	246
Rose D'Souza *v.* Joseph	I. L. R. 41 Bom. 70	304
Ruttonsi Rowji *v.* The Bombay United Spinning and Weaving Co.	I. L. R. 41 Bom. 518	76

S

Sagar Mal *v.* Rao Girraj Singh	I. L. R. 39 All. 120	245
Sahu Ram Chandra *v.* Bhup Singh	I. L. R. 39 All. 437; L. R. 44 I. A. 126; 21 C. W. N. 698	147
Sai Sikandar Rowther *v.* Ghouse Mohidin Marakayar	I. L. R. 40 Mad. 355	236
Sakhayur Ali *v.* Alhadi Hazi	21 C. W. N. 928	86
Sam *v.* Ramalinga Mudaliar	I. L. R. 40 Mad. 664	110
Sanat Kumar Das *v.* Indra Nath Barman	21 C. W. N. 740	211
Santhappa Sethuran *v.* Govindaswamy Kandiyar	I. L. R. 40 Mad. 791	97
Santos *v.* Pinto	I. L. R. 41 Bom. 687	280
Sarada Kripa Laha *v.* Akil Bandhu Biswas	21 C. W. N. 903	172
Sarada Prosad Ray Chowdhury *v.* Muhamad Yusuf	21 C. W. N. 1007	128
Saradindu Ray *v.* Girish Mohini Debi	21 C. W. N. 240	27
Sarat Chandra Dutt *v.* Jadab Chandra Goswami	I. L. R. 44 Calc. 214; 21 C. W. N. 206	283
Sarat Chandra Madak *v.* Mobarak Mullik	21 C. W. N. 439	87
Sarat Chandra Ray *v.* Secretary of State for India	21 C. W. N. 238	300
Saravana Pillai *v.* Arunachalam Chettiar	I. L. R. 40 Mad. 841	47
Sarup Lal *v.* Lala	I. L. R. 39 All. 707	296
Sashi Mohan Saha *v.* Kumud Kumar Biswas	21 C. W. N. 246	277
Satish Chandra Bosu *v.* Nittya Gopal Haldar	21 C. W. N. 978	31
Satish Chandra Mitra *v.* Jogendra Nath Mahalanabis	I. L. R. 44 Calc. 345	114

Name of Case.	Volume and Page.	Column of Digest.
Sattiraju *v.* Venkataswami	I. L. R. 40 Mad. 925	136
Satya Charan Mukherjee *v.* Dina Nath Biswas	21 C. W. N. 1130	22
Savarimuthu Pillai, *Re*	I. L. R. 40 Mad. 108	93
Secretary of State for India *v.* Birendra Kishore Manikya	I. L. R. 44 Calc. 328; 21 C. W. N. 291	302
Secretary of State for India *v.* Govinda Prosad Barik	21 C. W. N. 505	25, 27, 32
Secretary of State for India *v.* Jadav Chandra Misra	21 C. W. N. 452	23
Secretary of State for India *v.* Mahadeva Sastrigal	I. L. R. 40 Mad. 58	160
Secretary of State for India *v.* Rajah of Vizianagram	I. L. R. 40 Mad. 1083	12
Secretary of State for India *v.* Srinivasa Chariar	I. L. R. 40 Mad. 268	155
Secretary of State for India *v.* Venkayya	I. L. R. 40 Mad. 910	175
Seeti Kutti *v.* Kunhi Pathumma	I. L. R. 40 Mad. 1040	190
Sellamani, *Re*	I. L. R. 40 Mad. 923	98
Serajmal Khorad *v.* Abhoy Kumar Roy Chowdhury	21 C. W. N. 595	48
Seshachala Chetty *v.* Chinnasami	I. L. R. 40 Mad. 410	205
Seshamma *v.* Padmanabha Rao	I. L. R. 40 Mad. 660	137
Seshappier *v.* Subramania Chettiar	I. L. R. 40 Mad. 678	186
Seth Dooly Chand *v.* Mamuji Musaji	21 C. W. N. 387	17
Sham Rathi Rai *v.* Jaichha Kunwar	I. L. R. 39 All. 520	150
Shama Kanta Chatterji & Co. *v.* Kusum Kumari	I. L. R. 44 Calc. 10	300
Shanmuga Chetty *v.* Narayana Ayyar	I. L. R. 40 Mad. 743	54
Shanmuganatha Chettiar *v.* Srinivasa Ayyar	I. L. R. 40 Mad. 727	225
Shashi Bhusan Bose *v.* Manindra Chandra Nandy	I. L. R. 44 Calc. 890; 21 C. W. N. 310	7
Shashi Bhusan Misra *v.* Jyoti Prasad Singh Deo	I. L. R. 44 Calc. 585; L. R. 44 I. A. 46; 21 C. W. N. 377	130
Sheo Charan Lal *v.* Taj Bhai Ali Bhai and Sons	I. L. R. 39 All. 368	44
Sheonandan *v.* Kashi	I. L. R. 39 All. 223	245
Sheikh Akloo *v.* Sheikh Emaman	I. L. R. 44 Calc. 403	171
Shiam Bihari Lal *v.* Malhi	I. L. R. 39 All. 107	296
Shib Dayal *v.* Sheo Ghulam	I. L. R. 39 All. 241	118
Shrinivasdas Bavri *v.* Meherbai	I. L. R. 41 Bom. 300; L. R. 44 I. A. 36; 21 C. W. N. 558	299
Shyam Mandal *v.* Satinath Banerjee	I. L. R. 44 Calc. 954; 21 C. W. N. 776	103
Shyamananda Das Paharaj *v.* Ram Kanta Das Mohapatra	21 C. W. N. 1142	127
Siddiqa Bibi *v.* Ram Autar Pande	I. L. R. 39 All. 675	10
Simhachalam *v.* King-Emperor	I. L. R. 44 Calc. 912; 21 C. W. N. 573	164
Sital Prasad, *Re*	21 C. W. N. 620	9
Sitaram Bhaurao *v.* Sayad Sirajul	I. L. R. 41 Bom. 636	200
Sofiuddin Kaji *v.* Fajel Shaik	21 C. W. N. 756	90
Somasundaram *v.* Chokalingam	I. L. R. 40 Mad. 780	52
Somasundaram Chettiar *v.* Vaithilinga Mudaliar	I. L. R. 40 Mad. 846	138
South Indian Mills Company, Ltd., The *v.* Raja Bahodur Motilal	I. L. R. 40 Mad. 706	64
Sreenath Roy *v.* Peary Mohan Mukherjee	21 C. W. N. 479	188, 243
Sripat Singh Dugar *v.* Prodyot Kumar Tagore	I. L. R. 44 Calc. 524; L. R. 44 I. A. 1; 21 C. W. N. 442	268

Name of Case.	Volume and Page.	Column of Digest.
Ste. Croix *v.* Ste. Croix	I. L. R. 44 Calc. 35; 21 C. W. N. 711	107
Ste. Croix *v.* Ste. Croix	I. L. R. 44 Calc. 1091; 21 C. W. N. 717	106
Suba Singh *v.* Mahabir Singh	I. L. R. 39 All. 544	236
Subba Naick *v.* Rama Ayyar	I. L. R. 40 Mad. 775	132
Subba Rao *v.* Rama Rao	I. L. R. 40 Mad. 291	186
Subbarayudu *v.* Yerram Setti Seshasani	I. L. R. 40 Mad. 299	51
Subbaroya Goundan *v.* Ranganada Mudaliar	I. L. R. 40 Mad. 93	156
Subramania Ayyar *v.* Raja Rajeswara Dorai	I. L. R. 40 Mad. 1016	120
Subramania Ayyar *v.* Subramania Pattar	I. L. R. 40 Mad. 683	209
Sudhanya Bawali *v.* King-Emperor	21 C. W. N. 839	17
Sudhir Charan Das *v.* Govinda Chandra Roy	21 C. W. N. 1043	241
Sukh Lal *v.* Bishambhar	I. L. R. 39 All. 196	288
Sukha *v.* Raghunath Das	I. L. R. 39 All. 214	44
Sulaiman *v.* Biyaththumma	21 C. W. N. 553	46
Sundar Nath *v.* Mallu.	I. L. R. 39 All. 476	55
Sundaram Ayyar *v.* Ramachandra Ayyar	I. L. R. 40 Mad. 389	110
Sunnasi Kudumban *v.* Sivasubramania Kone	I. L. R. 40 Mad. 1130	92
Suraj Narain *v.* Ratan Lal	L. R. 44 I. A. 201; 21 C. W. N. 1065	147
Surendra Lal Choudhuri *v.* Secretary of State for India	21 C. W. N. 1125	254
Surendra Nath Roy *v.* Dwarka Nath Chakravarti	I. L. R. 44 Calc. 119; 21 C. W. N. 530	15
Surja Kunwari *v.* Har Narain Ram	I. L. R. 39 All. 311	70
Sushil Chandar Das *v.* Gauri Shankar	I. L. R. 39 All. 81	188
Swami Chetty *v.* Ethirajulu Naidu	I. L. R. 40 Mad. 547	258
Syedunnessa Khatun *v.* Amiruddi	21 C. W. N. 847	31

T

Tajbi *v.* Mowla Khan	I. L. R. 41 Bom. 485	198
Tapsi Singh *v.* Hardeo Singh	I. L. R. 39 All. 711	297
Tarak Das Moitra *v.* King-Emperor	21 C. W. N. 125	96
Tavakalbhai *v.* Imatiyaj Begam	I. L. R. 41 Bom. 372	198
Thakurdas Motilal *v.* Joseph Iskender	I. L. R. 44 Calc. 1072; 21 C. W. N. 887	124
Thethalan *v.* The Eralpad Rajah, Calicut	I. L. R. 40 Mad. 1111	294
Thevaraya Reddy *v.* Venkatachalam Pandithan	I. L. R. 40 Mad. 804	293
Tirumalaisami Naidu *v.* Subramanian Chettiar	I. L. R. 40 Mad. 1009	59
Tiruvambala Desikar *v.* Manikkavachaka Desikar	I. L. R. 40 Mad. 177	218
Tricomdas Cooverji Bhoja *v.* Gopinath Jiu Thakur	I. L. R. 44 Calc. 759; L. R. 44 I. A. 65; 21 C. W. N. 577	180
Trustees for the Improvement of Calcutta *v.* Chandra Kanta Ghosh	I. L. R. 44 Calc. 219; 21 C. W. N. 8	170

U

Umar Mahammad *v.* Man Kuar	21 C. W. N. 906	69
Upendra Lal Gupta *v.* Meheraj Bibi	21 C. W. N. 108	27
Upendra Nath Chowdhury *v.* King-Emperor	21 C. W. N. 552	226
Upendra Nath Nag Chowdhury *v.* Purendra Nath Nag Chowdhury	21 C. W. N. 280	22
Uttam Singh *v.* Hukum Singh	I. L. R. 39 All. 112	118

Name of Case.	Volume and Page.	Column of Digest.
V		
Vaithilinga *v.* Ayyathorai	I. L. R. 40 Mad. 1118	38
Vakil of the High Court, *In the matter of a*	I. L. R. 40 Mad. 69	243
Vardaji Kasturji *v.* Chandrappa	I. L. R. 41 Bom. 40	233
Venkata Chetty *v.* Aiyanna Goundan	I. L. R. 40 Mad. 561	120
Venkatakrishnayya, *Re*	I. L. R. 40 Mad. 591	94
Venkatakrishniah *v.* Subbarayudu	I. L. R. 40 Mad. 698	184
Venkataramana Ayyangar *v.* Kasturiranga Ayyangar	I. L. R. 40 Mad. 212	49
Venkatasubbarayudu *v.* Sri Rajah Krishna Yachendrulu Varu Bahadur	I. L. R. 40 Mad. 651	264
Venkatasubbayya, *Re*	I. L. R. 40 Mad. 589	106
Venkati Rama Reddi *v.* Pillati Rama Reddi	I. L. R. 40 Mad. 204	129
Venkayamma *v.* Narsamma	I. L. R. 40 Mad. 540	152
Venkataratnam *v.* Sri Rajah Appa Rao Bahadur	I. L. R. 40 Mad. 529	111
Victoria Mills Company, Ltd. *v.* Brij Mohan Lal	I. L. R. 39 All. 362	56
W		
Wittenbaker *v.* J. C. Galstaun	I. L. R. 44 Calc. 917	271
Z		
Zaib-un-nissa Bibi *v.* Maharaja Parbhu Narain Singh	I. L. R. 39 All. 618	213

ANNUAL DIGEST

OF

THE HIGH COURT REPORTS

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1917.

A

ABANDONMENT.

———— of a child—

See PENAL CODE (ACT XLV OF 1860) 317 . . **I. L. R. 41 Bom. 152**

ABATEMENT OF SUIT.

See LIMITATION . **L. R. 44 I. A. 218**

ABISHEGAM.

———— effect of—

See MUTT . **I. L. R. 40 Mad. 177**

ABWAB.

———— *Reg. V of 1812, s. 3—whether each of several sums mentioned as payable in a lease, recoverable as rent—Every sum which is consideration for use and occupation, if rent—Full Bench decision, on point not arising in the case but accepted for years as good law, if may be departed from by Division Bench.* A *kabuliyat* after stating that the annual rent was to be Rs. 3,351-4 proceeded :—" Besides this I shall continue to pay in the month of Bhadro every year the sum of Rs. 15 as the *mamuli* (usual) for the Iswar Thakur at your house at Azimgunj. If I fail to pay the aforesaid sum amicably then you shall deduct the same from the money remitted to me as the rent, or sue for the amount along with, or separately from, the arrears of rent. I shall not take objections thereto". *Held*, on the construction of the *kabuliyat*, that the sum of Rs. 15 was not intended by the parties to be part of the consideration for the use and occupation of the and or as part of the rent, and being an *abwab* was irrecoverable. *Per* Sanderson, C. J.—The rule that has been followed in this Court is that each case must depend upon the proper construction of the contract before the Court and if upon a fair interpretation of the contract it can be seen that a particular sum is specified in the contract or agreed to be paid as the lawful consideration for the use and occupation of the land, *i.e.*, if it is really part of the rent although not described as such, the landlord can recover it. The opinion of the majority in *Radha Prosad Singh* v. *Bal Kowar Koeri, I. L. R. 17 Calc. 726* even

ABWAB—*concld.*

though not strictly necessary for the decision of the case, having been acted upon since 1885, should not be departed from by Division Benches of the Court. *Per* N. R. CHATTERJEA, J.—Though more sums than one may constitute the rent, it is not every sum forming part of the consideration of the lease that is rent and recoverable as such. The sum of Rs. 15 mentioned in the *kabuliyat* did not form part of the consideration for the lease, and even if it did, it did not form part of the rent. In determining whether an item did or did not form part of the rent, the fact that it has been stipulated to be paid separately from the rent and also the fact that it is not included in the instalments of the rent have been considered as having material bearing on the question. BEJOY SING DUDHURIA *v.* KRISHNA BEHARY BISWAS (1917). **21 C. W. N. 959**

ACCELERATION OF ESTATE.

———— by the widow to next reversioners—

See HINDU LAW—WIDOW. **I. L. R. 41 Bom. 93**

ACCEPTANCE.

See BILL OF EXCHANGE. **I. L. R. 41 Bom. 566**

ACCOUNT.

See SUIT FOR ACCOUNT.

See COMMISSIONER. **I. L. R. 41 Bom. 719**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 13. **I. L. R. 41 Bom. 453**

———— suit for—

See COMMON MANAGER. **I. L. R. 44 Calc. 800**

———— *Limitation Act (XV of 1877), Sch. II, Art. 89, and s. 8.—Principal and Agent—Death of Principal leaving sons some of whom were minors—Proprietor appointed by co-proprietors manager of estate for payment of joint debts—Omission to bring cross-appeal to High Court or file cross-objections under s. 561, Civil Procedure Code, 1882—Bar to decree for claim in full on appeal*

ACCOUNT—*concld.*

to Privy Council. In this case, which was an appeal from the decision of the High Court in *Chandra Madhab Barua* v. *Nobin Chandra Barua, I. L. R. 40 Calc. 108*, their Lordships of the Judicial Committee found that there was no evidence of any kind that a demand for, and refusal of, accounts was made after the death of the plaintiffs' (appellants') father; and that there was nothing in the plaint to justify the inference drawn by the High Court in that respect adversely to the plaintiffs. *Held*, that the minor plaintiffs being entitled to the benefit of s. 8 of the Limitation Act, 1877, and Art. 89 of Sch. II of that Act being applicable to the suit, there was nothing in the provisions of that Article to protect the defendant (respondent) against the liability to render accounts from July, 1896 (as decreed by the Subordinate Judge) and limit his liability to do so only from August, 1901, (as decided by the High Court). In the absence of any cross-appeal by the plaintiffs to the High Court, or any cross-objections filed by them under s. 561 of the Civil Procedure Code, 1882, they could not obtain on this appeal a decree for accounts for the whole period of the agency, but they were entitled to the restoration of the order of the Subordinate Judge for accounts for the longer period. NOBIN CHANDRA BARUA *v.* CHANDRA MADHAB BAURA (1916) . . . **I. L. R. 44 Calc. 1**

ACCOUNTANT-GENERAL.

See EXECUTION OF DECREE.
I. L. R. 44 Calc. 1072

ACCRETION.

———— **gradual—**

See ALLUVION . **I. L. R. 40 Mad. 1083**

ACCUSED PERSON.

————**statement of—**

See CRIMINAL PROCEDURE CODE, S. 364.
I. L. R. 39 All. 399

ACKNOWLEDGMENT.

See ACKNOWLEDGMENT OF DEBT.

See LEASE . . **I. L. R. 40 Mad. 910**

See LIMITATION ACT (IX OF 1908), S. 20.
I. L. R. 41 Bom. 166

———— **conditional, operation of—**

See LIMITATION ACT (IX OF 1908), S. 19.
I. L. R. 40 Mad. 701

ACKNOWLEDGMENT OF DEBT.

See PRINCIPAL AND SURETY.
I. L. R. 44 Calc. 978

ACQUITTAL.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 439.
I. L. R. 41 Bom. 560

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 970

———— *Reference therefrom to High Court by District Magistrate—Revision, hearing of, on evidence, whether appeal—Appeal from acquittal by he Local Government—Criminal Procedure Code (Act V of 1898), ss. 417, 435, 438—Jurisdiction—Practice.* In the case of an acquittal, when the Local Government has not preferred an appeal under s. 417 of the Criminal Procedure Code, the High Court ought not to interfere in revision,

ACQUITTAL—*concld.*

on a reference under s. 438, where it cannot do so without practically hearing the case on the evidence as an appeal in order to satisfy itself that the opinion of the referring Court is correct, though it has jurisdiction to intervene in revision in such cases. *Faujdar Thakur* v. *Kasi Chowdhuri, I. L. R. 42 Calc. 612; 19 C. W. N. 184*, referred to. HRISHIKESH MANDAL *v.* ABADHAUT MANDAL (1916) . . . **I. L. R. 44 Calc. 703**

ACT.

———— **1846—I.**

See LEGAL PRACTITIONERS' ACT, 1846.

———— **1850—XVIII.**

See JUDICIAL OFFICERS' PROTECTION ACT.

———— **1850—XXI.**

See CASTE DISABILITIES REMOVAL ACT.

———— **1852—XVIII.**

See PLEADERS OF LOWER PROVINCES ACT.

———— **1858—XXXV.**

See LUNACY ACT.

———— **1859—XI.**

See REVENUE SALE LAW.

See SALE FOR ARREARS OF REVENUE.

———— **1860—XLV.**

See PENAL CODE.

———— **1861—V.**

See POLICE ACT.

———— **1863—XX.**

See RELIGIOUS ENDOWMENTS ACT.

———— **1863—XXIII.**

See WASTE LANDS ACT.

———— **1865—X.**

See SUCCESSION ACT.

———— **1865—XX.**

See PLEADERS, MUKHTEARS, AND REVENUE AGENTS' ACT.

———— **1868—I.**

See GENERAL CLAUSES ACT, 1868.

———— **1869—IV.**

See DIVORCE ACT.

———— **1870—VII.**

See COURT-FEES ACT.

———— **1870—XXI.**

See HINDU WILLS ACT.

———— **1871—IX.**

See LIMITATION ACT, 1871.

———— **1871—XXIII.**

See PENSIONS ACT.

———— **1872—I.**

See EVIDENCE ACT.

———— **1872—IX.**

See CONTRACT ACT.

———— **1872—XV.**

See CHRISTIAN MARRIAGE ACT.

ACT—*contd.*

——— **1874—XIV.**
See SCHEDULED DISTRICTS ACT.

——— **1876—X.**
See BOMBAY REVENUE JURISDICTION ACT.

——— **1877—I.**
See SPECIFIC RELIEF ACT.

——— **1877—III.**
See REGISTRATION ACT.

——— **1877—XV.**
See LIMITATION ACT, 1877.

——— **1879—XVIII.**
See LEGAL PRACTITIONERS' ACT.

——— **1881—V.**
See PROBATE AND ADMINISTRATION ACT.

——— **1881—XXVI.**
See NEGOTIABLE INSTRUMENTS ACT.

——— **1882—II.**
See TRUSTS ACT.

——— **1882—IV.**
See TRANSFER OF PROPERTY ACT.

——— **1882—V.**
See EASEMENTS ACT.

——— **1882—VI.**
See COMPANIES ACT.

——— **1882—XIV.**
See CIVIL PROCEDURE CODE, 1882.

——— **1882—XV.**
See PRESIDENCY SMALL CAUSE COURTS ACT.

——— **1885—VIII.**
See BENGAL TENANCY ACT.

——— **1887—VII.**
See SUITS' VALUATION ACT.

——— **1887—IX.**
See PROVINCIAL SMALL CAUSE COURTS ACT.

——— **1890—VIII.**
See GUARDIANS AND WARDS ACT.

——— **1890—IX.**
See RAILWAYS ACT.

——— **1890—XI.**
See PREVENTION OF CRUELTY TO ANIMALS ACT.

——— **1893—IV.**
See PARTITION ACT.

——— **1896—IX.**
See RAILWAYS AMENDMENT ACT.

——— **1897—VIII.**
See REFORMATORY SCHOOLS ACT.

——— **1897—X.**
See GENERAL CLAUSES ACT, 1897.

——— **1898—V.**
See CRIMINAL PROCEDURE CODE.

ACT—*concld.*

——— **1899—II.**
See STAMP ACT.

——— **1907—III.**
See PROVINCIAL INSOLVENCY ACT

——— **1908—V.**
See CIVIL PROCEDURE CODE.

——— **1908—IX.**
See LIMITATION ACT.

——— **1908—XVI.**
See REGISTRATION ACT.

——— **1909—III.**
See PRESIDENCY TOWNS INSOLVENCY ACT.

——— **1910—II.**
See PAPER CURRENCY ACT.

——— **1911—III.**
See CRIMINAL TRIBES ACT.

——— **1912—IV.**
See LUNACY ACT.

——— **1913—VI.**
See MUSSALMAN WAKF VALIDATING ACT.

——— **1913—VII.**
See COMPANIES ACT.

——— **1915—I.**
See EMERGENCY LEGISLATION CONTINUANCE ACT.

ACTIONABLE CLAIM.

——— **nature of—**
See MORTGAGE . **I. L. R. 40 Mad. 683**

ACTS AND DECLARATIONS OF GOVERNMENT.
See INAM . . **I. L. R. 40 Mad. 268**

ADJUDICATION.
See INSOLVENCY.
I. L. R. 44 Calc. 899

——— **order of—**
See INSOLVENCY.
I. L. R. 44 Calc. 535

ADMINISTRATION.

——— **order of—**
See INSOLVENCY.
I. L. R. 44 Calc. 1016

ADMINISTRATION SUIT.

——— *Procedure and Practice—Valuation of suit—Creditor's action against trustee for administration of trust and for accounts—Plaintiff representing body of creditors—Jurisdiction—Civil Procedure Code (Act V of 1908) O. XXI, r. 13 App. A No. 41 and D Nos. 17-20—Court-Fees Act (VII of 1870), ss. 7 (iv) (f), 11; Sch. II, Art. 17 (vi) —Suits' Valuation Act (VII of 1887), s. 8.* An administration suit by a creditor is an action for account within the meaning of s. 7 (iv) (*f*) of the Court fees Act. In such a suit the plaintiff is entitled to place his own valuation on the relief claimed. On the analogy of s. 11 of the Court-

ADMINISTRATION SUIT—*concld.*

fees Act, after the preliminary decree has been made in a creditor's suit for administration and the other creditors have been invited to establish their claim, if any, against the debtor, each creditor who puts forward a claim not already transformed into a judgment-debt, may well be required to pay court-fees *ad valorem* on his application, as if it were a plaint in a suit for the recovery of the sum he claims. The valuation for the purpose of jurisdiction must be identical under s. 8 of the Suits' Valuation Act, with the valuation for the purpose of court-fees. Where a suit is valued on the basis of the claim of the plaintiff and instituted in the Court of the lowest grade of pecuniary jurisdiction and a claim is thereafter preferred by a creditor, who could, in respect of his claim, institute a suit only in a Court of higher grade, the remedy will be the transfer of the suit at that stage from the Court of the lowest grade to the Court competent to try a claim of enhanced value. SHASHI BHUSHAN BOSE *v.* MANINDRA CHANDRA NANDY (1916).
I. L. R. 44 Calc. 890

ADMINISTRATOR.

See MAHOMEDAN LAW—PRE-EMPTION.
I. L. R. 41 Bom. 636

ADMISSION.

——— by defendant—

See EVIDENCE . **I. L. R. 44 Calc. 130**

ADOPTED SON.

See HINDU LAW—WIDOW.
I. L. R. 41 Bom. 93

——— of a Sudra, share of, on partition—

See HINDU LAW—PARTITION.
I. L. R. 40 Mad. 632

ADOPTION.

See HINDU LAW—ADOPTION.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 118 . **I. L. R. 41 Bom. 728**

——— by minor widow—

See HINDU LAW—ADOPTION.
I. L. R. 40 Mad. 925

——— evidence of—

See HINDU LAW—ADOPTION.
I. L. R. 44 Calc. 201

ADULTERY.

See DIVORCE . **I. L. R. 44 Calc. 1091**

ADVERSE POSSESSION.

See DILUVIATED LAND.
I. L. R. 44 Calc. 858

See ESTOPPEL . **I. L. R. 44 Calc. 145**

See EVIDENCE . **I. L. R. 39 All. 696**

See LIMITATION ACT (IX OF 1908), s. 18; SCH. I, ARTS. 124, 144.
I. L. R. 39 All. 636

See MORTGAGE . **I. L. R. 39 All. 423**

1. ——— *Simple Mortgage—Adverse possession, against mortgagor, whether adverse against mortgagee in case of simple mortgage—Limitation—Limitation Act (IX of 1908) s. 28, Sch. I, Art. 144.* Adverse possession against the mortgagor is not *per se* adverse also against the mortgagee in the case of a simple mortgage. *Per* SANDERSON, *C.J.* Adverse possession affects the interest which the person, who was entitled to immediate possession, had at that time. *Per* MOOKERJEE, *J.* s. 28 of the Limitation Act clearly contemplates that the person, whose right is extinguished by lapse of time, is a person entitled to institute a suit for possession of the property. *Karan Singh* v. *Bakar Ali Khan, I. L. R. 5 All. 1; L. R. 9 I. A. 99,* and *Prannath Roy Chowdhury* v. *Rookea Begum, 7 Moo. I. A. 323,* distinguished. *Aimadar Mandal* v. *Makhan Lal Dey, I. L. R. 33 Calc. 1015; 10 C. W. N. 904,* and *Parthasarathy Naicken* v. *Lakshmana Naicker, I. L. R. 35 Mad. 231; 21 Mad. L. J. 467,* referred to. *Nallamuttu* v. *Betha Naicken, I. L. R. 23 Mad. 37,* dissented from. PRIYA SAKHI DEBI *v.* MANBODH BIB (1916) . . . **I. L. R. 44 Calc. 425**

2. ——— *Adverse possession, acts necessary to constitute—Adverse possession against putnidar previous to purchase by zamindar of putnidar's interest, effect of, on purchaser.* The plaintiffs sued for declaration of their title to and *khas* possession of a certain tank which the plaintiffs claimed they held under a lease granted to them in 1883 by some persons who were in possession as *putnidars* under the first defendant whose case on the other hand was that the tank was included in a different *putni* held under him by different *putnidars* and that in 1899 he purchased the *putni* right of the latter and was consequently entitled to take possession of the tank. It was found that the tank in question was not included in the *putni* of the plaintiffs' lessors but in the other *putni* as alleged by the defendant but since the date of their lease the plaintiffs had been in occupation of the tank on the basis of their lease and had in assertion of their right let it out to sub-tenants from time to time, mortgaged it and re-excavated it: *Held,* that the acts exercised by the plaintiffs in respect of the disputed tank constituted adverse possession and were sufficient to extinguish the title of the defendant's vendors on the date of the purchase by the defendant who consequently did not by his purchase acquire any title to the tank in dispute and could not successfully resist the claim of the plaintiffs for declaration of title and recovery of possession. BIJAY CHAND MAHATAP BAHADUR *v.* ISWAR CHANDRA DAS (1916).
21 C. W. N. 199

3. ——— *Possession of trespasser during currency of lease, if adverse to lessor—Long possession by trespasser, if gives rise to equity, when his case that he held bona fide under person whom he believed to be owner found false. Held,* on a review of authorities, that where property has been let out in lease, the possession of a trespasser does not become adverse as against the lessor until the termination of the lease. Trespassers whose case that they *bonâ fide* held the land under a person whom they believed to be the owner thereof is found to be false are not entitled in equity to protection against ejectment. HAJRA SARDARA *v.* KUNJA BEHARY NAG CHOWDHURY (1917).
21 C. W. N. 1001

ADVICE.

——— improper, to client—

See PROFESSIONAL MISCONDUCT.
I. L. R. 40 Mad. 69

AGENCY.

——— *Joint principals—Joint power of attorney—Execution of mortgage in pursuance of the authority—Death of one of the principals, effect on the power of attorney—Position of the parties, object of the power and the nature of the property, whether material in construing the power—Members of a Mitakshara family—Indian Contract Act (IX of 1872), s. 201.* S. P., R. K. and R. S., three brothers, executed a joint power-of-attorney in favour of R. P., the fourth brother (all the brothers living jointly as members of a Mitakshara family) and thereby authorized him to borrow money on their behalf and, as security for the loan, to mortgage their joint property. Subsequently R. S. died without issue. After his death a mortgage was executed by R. P. and R. K. on their own behalf and by R. P. as attorney for S. P. A second mortgage was executed of the same properties by R. P. on his own behalf and as attorney for R. K. and S. P. A third mortgage of the same properties was executed by R. P. on his own behalf and as attorney for S. P., R. K. having died previously to the execution of the third mortgage, leaving certain minor sons, and R. P. also purported to execute the third mortgage as guardian of these minor sons of R. K. *Held*, that the intention of the parties was that the power-of-attorney should continue as long as the property remained undivided, and so the deaths of R. S. and R. K. did not revoke the power-of-attorney. *Held*, also, that consequently the mortgages were valid and binding on the joint properties. *Per* MOOKERJEE, *J.*—We cannot hold, as an inflexible rule of law, that whenever two principals appoint an agent to take charge of some matter in which they are jointly interested, the death of one of them terminates the authority of the agent not merely as regards the deceased, but also as regards the surviving principal. We have, in each case, to determine the true intention of the parties to the contract, from the terms thereof and from the surrounding circumstances. SITAL PROSHAD, *Re* (1916) . . . . **21 C. W. N. 620**

AGGRIEVED PARTY.

——— **remedies of—**

See DECREE . **I. L. R. 44 Calc. 627**

AGNATES.

See CUSTOM . **I. L. R. 44 Calc. 749**

AGRA TENANCY ACT (II OF 1901).

——— **ss. 4, 167**—*Grove—Suit by zamindar for part of produce of grove—Rent—Civil and Revenue Courts—Jurisdiction.* Where a zamindar permits a person to plant a grove in his zamindari upon the condition of the grove-holders paying yearly to the zamindar a fixed proportion of the produce thereof, the part of the produce paid to the zamindar is rent and a suit for the recovery of the same lies in a Revenue, and not in a Civil, Court, RAGHUBIR RAI *v.* MADHO (1917) . **I. L. R. 39 All. 605**

——— **ss. 10, 20, 83**—*Sale of zamindari—Agreement to surrender ex-proprietary rights—Suit for damages for breach of contract to deliver possession—Contract void as contravening policy of Act—Contract Act (IX of 1872), ss. 23, 65.* In this appeal their Lordships of the Judicial Committee affirmed the decision of the High Court at Allahabad in the case of *Ikram-ullah Khan* v. *Moti Chand, I. L. R. 33 All. 695*, holding that an agreement by the defendants for relinquishment of all their "*sir*" and "*khudkasht*" lands, and ex-proprietary rights therein to the plaintiffs, none of whom were at the execution of the agreement proprietors, landholders or co-sharers in the land to be relinquished, and agreeing to pay damages for any breach of the contract by them, was illegal and void as being in contravention of the policy of Act II of 1901 (Agra Tenancy Act). MOTI CHAND *v.* IKRAM-ULLAH KHAN (1916).

I. L. R. 39 All. 173

AGRA TENANCY ACT (II OF 1901)—*contd.*

——— **s. 10**—*concld.*

——— **s. 41—**

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), s. 36.

I. L. R. 39 All. 318

——— **s. 79**—*Fixed-rate holding—Purchase of holding at auction sale in execution of a decree—Formal possession obtained—Suit for physical possession—Jurisdiction.* The purchasers of a fixed-rate holding at an auction sale held in pursuance of a decree on a mortgage applied for and obtained formal possession of the holding; the zamindar, however, refused to allow them to cultivate, and in consequence thereof they instituted, in a Civil Court, a suit for possession of the holding. *Held*, that the position of the plaintiffs was that of tenants who had been wrongfully ejected by the zamindar, to which s. 79 of the Agra Tenancy Act, 1901, applied, and that no suit would lie in a Civil Court. *Collector of Benares* v. *Shiam Das, 13 All. L. J. 329*, distinguished. ABDUL HASAN *v.* MAKHDUM BAKHSH (1917) . **I. L. R. 39 All. 455**

——— **s. 95—**

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), ss. 203 TO 207.

I. L. R. 39 All. 711

——— **s. 158**—*United Provinces Land Revenue Act (III of 1901), s. 34—Muafi grant—Resumption—Grant to mahant of temple. Held*, that s. 158 of the Agra Tenancy Act, 1901, and s. 34 of the United Provinces Land Revenue Act, 1901, apply to land granted rent-free for charitable purposes to the *mahant* of a temple. Where, therefore, land so granted has been held for more than fifty years, and by two or more successors to the original grantee, it cannot be resumed. BHARAT DAS *v.* NANDRANI KUNWAR (1917) . . . . **I. L. R. 39 All. 689**

——— **s. 164—**

See CIVIL PROCEDURE CODE (1908), O. XXVI, RR. 9, 16, 17, 18.

I. L. R. 39 All. 694

——— **s. 167**—*Jurisdiction—Civil and Revenue Courts—Suit by assignee of right to receive rent from fixed-rate tenant for declaration of plaintiff's title and for an injunction against zamindar and tenant.* The transferee of an assignee of the zamindar of the right to realize rent from a tenant at fixed rates of certain plots of land in a village filed a suit in a Civil Court asking for (i) a declaration of the plaintiff's right to receive the said rent, in virtue of a certain document styled a "perpetual lease", and (ii) a perpetual injunction against the zamindar and the fixed-rate tenant whose rent was assigned. *Held*, that the Civil Court had jurisdiction to entertain the suit. SIDDIQA BIBI *v.* RAM AUTAR PANDE (1917).

I. L. R. 39 All. 675

AGRA TENANCY ACT (II OF 1901)—*concld.*

———— **s. 202—**

See CIVIL PROCEDURE CODE (1908), s. 115.
I. L. R. 39 All. 254

AGREEMENT.

See HIRE-PURCHASE AGREEMENT.
I. L. R. 44 Calc. 72

———— **ante-decree—**

See EXECUTION PROCEEDINGS.
I. L. R. 40 Mad. 233

———— **for sale of immoveable property—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 . **I. L. R. 41 Bom. 438**

———— **opposed to public policy—**

See CONTRACT ACT (IX OF 1872), s. 23.
I. L. R. 39 All. 51, 58

AGRICULTURIST.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 60 (*c*).
I. L. R. 41 Bom. 475

———— **house of—**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 16, 36, 43.
I. L. R. 39 All. 120

ALIEN.

See BILL OF EXCHANGE.
I. L. R. 41 Bom. 566

ALIENATION.

See HINDU LAW—ALIENATION.

See HINDU LAW—WIDOW.
I. L. R. 41 Bom. 93

———— **by father—**

See HINDU LAW—ALIENATION.
I. L. R. 41 Bom. 347

———— **of widow's estate by Court of Wards—**

See HINDU LAW—REVERSIONERS.
I. L. R. 40 Mad. 871

ALIENEE.

See ATTACHMENT.
I. L. R. 44 Calc. 662

ALIEN ENEMY.

———— **contract with—**

See CONTRACT WITH ALIEN ENEMY.
I. L. R. 41 Bom. 390

———— **right of, to sue in a British Court—**

See CIVIL PROCEDURE CODE (1908), s. 83.
I. L. R. 39 All. 377

ALLEGIANCE.

See HABEAS CORPUS.
I. L. R. 44 Calc. 459

ALLUVION.

———— *Gradual accretion to an already existing lanka—Slow and imperceptible, meaning of—Land added in the bed of the river by slow, imperceptible, and gradual river action to a known extent of land, applicability of law of accretion to.* The plaintiff-respondent sued for a declaration against Government that a certain *lanka* or alluvial island formed in the bed of the Godávari at a place where it was both tidal and navigable, belonged to him as an accretion to his adjoining *lankas*. It was found by the Court below, with which finding the High Court agreed, that the suit *lanka* was

ALLUVION—*contd.*

originally formed in contiguity with the plaintiff's land, that it was formed very rapidly, and in some years, during the annual rise of the river, large additions were made, which could not but be perceptible as soon as the water subsided, that portion of the alluvial land was separated from the rest by a channel a few years before the suit and that it was not possible to say that the accretion was slow or imperceptible. *Held*, that the suit land was an accretion to the plaintiff's land, that in applying the rule of English law as to accretions, local physical conditions must be taken into consideration and that in the case of large rivers in India like the Godavari which on occasions leave large and sudden deposits, it is not necessary that the accretion should be slow or perceptible. *Rex* (*nom. Gifford*) v. *Yarborough, 2 Bligh* (*N.S.*) *147*, and *Attorney-General* v. *M'Carthy, 2 Ir. R. 260*, referred to. *Srinath Roy* v. *Dhinabandhu Sen, I. L. R. 42 Calc. 489*, applied. *Held*, also, that the fact that in 1870 when the suit *lanka* was not as yet formed, the extent and boundaries of the plaintiff's *lankas* were known or ascertainable, did not render the law of accretion inapplicable. *Attorney-General of Southern Nigeria* v. *John Holt & Co.* (*Liverpool*), *Limited* [1915], *A. C. 519, 612*, followed. THE SECRETARY OF STATE FOR INDIA *v.* RAJAH OF VIZIANAGARAM (1916).
I. L. R. 40 Mad. 1083

ALTERATION.

See BOND . . **I. L. R. 44 Calc. 154**

ANCESTRAL PROPERTY.

See HINDU LAW—ALIENATION.
I. L. R. 39 All. 485

ANNUITY.

See MORTGAGE . **I. L. R. 39 All. 700**

ANTICIPATORY ATTACHMENT.

See EXECUTION OF DECREE.
I. L. R. 44 Calc. 1072

APPEAL.

See APPEAL, FORUM OF.

See APPEAL IN CRIMINAL CASE.

See APPEAL IN FORMA PAUPERIS.

See APPEAL, RIGHT OF.

See ACQUITTAL . **I. L. R. 44 Calc. 703**

See CIVIL PROCEDURE CODE (1908), s. 2.
I. L. R. 39 All. 393

See CIVIL PROCEDURE CODE (1908), s. 24(*4*) . . **I. L. R. 39 All. 214**

See CIVIL PROCEDURE CODE (1908), s. 104, O. XLIII, R. 1; O. XXI, R. 90.
I. L. R. 39 All. 191

See CIVIL PROCEDURE CODE (1908) s. 115.
I. L. R. 39 All. 101

See CIVIL PROCEDURE CODE, 1908, s. 195.
I. L. R. 39 All. 147

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13 . . **I. L. R. 39 All. 13**

See CIVIL PROCEDURE CODE (1908), O. IX, R. 13, O. XVII, R. 3.
I. L. R. 39 All. 143

See CIVIL PROCEDURE CODE (1908), O. X, R. 4, O. XLIII, R. 1.
I. L. R. 39 All. 450

APPEAL—*contd.*

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 66 . **I. L. R. 39 All. 415**

See CIVIL PROCEDURE CODE, O. XXXIV, R. 5 . . **I. L. R. 39 All. 641**

See CIVIL PROCEDURE CODE (1908), SCH. II, PARAS. 16, 21, O. XXIII, R. 3. **I. L. R. 39 All. 401**

See COMPANIES ACT (VII OF 1913), S. 38. **I. L. R. 41 Bom. 76**

See COURT-FEE . **I. L. R. 39 All. 452**

See CRIMINAL PROCEDURE CODE, S. 125. **I. L. R. 39 All. 466**

See CRIMINAL PROCEDURE CODE, S. 195. **I. L. R. 39 All. 657**

See CRIMINAL PROCEDURE CODE, SS. 367, 418, 423 . . **I. L. R. 39 All. 348**

See CRIMINAL PROCEDURE CODE, S. 403. **I. L. R. 39 All. 293**

See CRIMINAL PROCEDURE CODE, S. 439. **I. L. R. 39 All. 549**

See DECREE . **I. L. R. 44 Calc. 954**

See HINDU LAW—ADOPTION. **I. L. R. 40 Mad. 846**

See LIMITATION . **L. R. 44 I. A. 218**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 22, 46. **I. L. R. 39 All. 152**

See PROVINCIAL INSOLVENCY ACT, 1907, SS. 43 (*2*), 46 . **I. L. R. 39 All. 171**

——— **delay in filing**—

See LIMITATION ACT (IX of 1908), S. 5. **I. L. R. 41 Bom. 15**

——— **from order for appointment of receiver**—

See RECEIVER . **I. L. R. 40 Mad. 18**

——— **re-hearing of**—

See CIVIL PROCEDURE CODE (1908), O. XLI, R. 21 . **I. L. R. 39 All. 388**

——— **right of**—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 43 (*2*) (*b*) AND 46 (*1*) AND (*2*). **I. L. R. 40 Mad. 630**

1. ——— *Against order of restoration of suit, if lies when defendant has taken some advantage under the order—Costs and allocatur—Protest, absence of.* Where a suit which was dismissed for non-prosecution was restored on an application on behalf of the plaintiffs and the Court made certain orders in respect of the payment of defendants' costs incidental to the application and the defendants got their costs taxed and obtained an allocatur: *Held*, that they having taken this advantage under the order were precluded from appealing against it. BANKU CHANDRA BOSE *v.* MARIUM BEGUM (1916) **21 C. W. N. 232**

2. ——— *Disposal of, effect on primary judgment.* The effect of the disposal of an appeal from the decree of the primary Court is that if it is reversed it is absolutely dead and gone, and if affirmed it is merged in the decree of the superior Court which takes its place for all intents and purposes. The fact that an appeal has been dismissed under s. 551 of the Code of 1882, or under

APPEAL—*concld.*

O. XLI, r. 11 of the Code of 1908, makes no difference in principle, for the dismissal operates as a decree and supersedes the decree of the lower Court precisely in the same way as a decree of dismissal made after service of notice to the respondent. CHANDRA KANTA BHATTACHARYA *v.* LAKSHMAN CHANDRA CHAKRAVARTI (1916) . **21 C. W. N. 430**

3. ——— *Heard ex parte—Duty of counsel.* Where an appeal is heard *ex parte*, it is the duty of counsel to bring to the notice of the Judicial Committee adverse, as well as favourable, authorities. DEONANDAN PROSAD *v.* JANAKI SING (1916) . . **21 C. W. N. 473**

APPEAL, FORUM OF.

——— *Suit for accounts in a Munsif's Court—Munsif passing a decree for more than Rs. 5,000—Appeal lying to District Court and not to the High Court, under s. 13 of the Madras Civil Courts Act (III of 1873).* Where a District Munsif passed a decree for more than Rs. 5,000 in a suit for accounts wherein the plaintiff valued the subject-matter of the suit at an amount within the pecuniary jurisdiction of the Munsif: *Held*, that under s. 13 of the Madras Civil Courts Act (III of 1873) the appeal from the Munsif's decree lay to the District Court, and not to the High Court. *Ayyalu Naidu* v. *Ramaswami Raja*, Civil Miscellaneous Appeal No. 131 of 1915, and *Chathanath Madhavi* v. *Chathanath Kunhunni Menon, 4 Mad. L. J. 43*, overruled. *Ijjatulla Bhuyan* v. *Chandra Mohan Banerjee, I. L. R. 34 Calc. 954*, 958, dissented from. *Muttammal* v. *Chinnana Goundan, I. L. R. 4 Mad. 220*, referred to. KANNAYYA CHETTI *v.* VENKATANARASAYYA (1916). **I. L. R. 40 Mad. 1**

APPEAL IN CRIMINAL CASE.

See PRIVY COUNCIL, PRACTICE OF. **I. L. R. 44 Calc. 876**

APPEAL IN FORMA PAUPERIS.

——— *Application to, filed in time—Dismissal of the application, effect of, on appeal—Granting time to pay court-fee and payment thereof in time, effect of, on appeal—Practice of pronouncing judgment on holidays, deprecated.* An application for leave to appeal *in forma pauperis* accompanying an unstamped memorandum of appeal, filed in time, was rejected by a District Court, some months afterwards, during the Christmas holidays. On the reopening day, the appellant applied for, and obtained, from the Court three weeks' time to pay the court-fee on the memorandum of appeal. The court-fee was paid within the time allowed. *Held*, (i) that the appeal was in time and must be deemed to have been filed as on the original date of presentation; (ii) that the dismissal of an application to appeal *in forma pauperis* does not necessarily lead to a dismissal of the memorandum of appeal; and (iii) that an Appellate Court has, under s. 149, Civil Procedure Code, power to grant time to pay the requisite court-fee. *Bai Ful* v. *Desai Manorbhai, I. L. R. 22 Bom. 880*, followed. *Per* SADASIVA AYYAR, *J.*—The practice of pronouncing judgments during the Christmas holidays for the purpose of swelling the statistics is to be deprecated. A statement in a judgment as to an admission made before the Court of first instance should not be doubted lightly by the Appellate Court, especially in the absence of an affidavit of the vakil who appeared

APPEAL IN FORMA PAUPERIS—*concld.*

in the Court of first instance. NALLAVADIVA AMMAL *v.* SUBRAMANIA PILLAI (1916).

I. L. R. 40 Mad. 687

APPEAL, RIGHT OF.

——— *Sanction for prosecution refused by the Presidency Small Cause Court—High Court, revisional jurisdiction of—Appeal from order of single Judge sitting on Original Side made in exercise of such jurisdiction—Nature of trial—"Judgment"—Civil Procedure Code (Act V of 1908), s. 115—Criminal Procedure Code (Act V of 1898), s. 195 (6)—Letters Patent (1865), cl. 15.* Sanction to prosecute the plaintiff in a civil suit in the Presidency Small Cause Court for making a false claim and for making a false statement in an application for leave to institute a suit was refused by a Judge of that Court. The defendant, thereupon, applied to the Original Side of the High Court for a reversal of the order and obtained an order of remand to the Small Cause Court Judge. The plaintiff having appealed against this order of remand:—*Held*, that the order appealed against was a "judgment" within the meaning of cl. 15 of the Letters Patent, and that there was a right of appeal. *The Justices of the Peace for Calcutta* v. *The Oriental Gas Company, 8 B. L. R. 433*, referred to. *Held*, also, that in every case where the Court is called upon to decide whether the decision under appeal is, or is not, a "judgment" within the meaning of cl. 15 of the Letters Patent, regard must be had to the nature and the contents of the order. *Ebrahim* v. *Fuckhrunnissa Begum, I. L. R. 4 Calc. 531, Hadjee Ismail Hadjee Hubbeeb* v. *Hadjee Mahomed Hadjee Joosub, 13 B. L. R. 91, Rana Aiyar* v. *Venkatachella Padayachi, I. L. R. 30 Mad. 311*, and *Mathura Sundari Dasi* v. *Haran Chandra Saha, I. L. R. 43 Calc. 857*, referred to. BUDHU LAL *v.* CHATTU GOPE (1916) . . . **I. L. R. 44 Calc. 804**

APPEAL TO PRIVY COUNCIL.

——— *Value of property, whether at date of institution of suit, or final decree—Whether plaintiff debarred from proving real value of property—Civil Procedure Code (Act V of 1908), s. 110.* The point of time to be considered (as to the value of the property) under the second paragraph of s. 110 of the Code of Civil Procedure, is the date of the judgment or final order under appeal to the Privy Council. *Allan* v. *Pratt, L. R. 13 A. C. 780, Macfarlane* v. *Leclaire, 15 Moo. P. C. C. 181, Mohideen* v. *Pitchey, [1893] A. C. 193, Dalgleish* v. *Damodar Narain, I. L. R. 33 Calc. 1286, Bank of New South Wales* v. *Owston, L. R. 4 A. C. 270, Gooroopersad* v. *Juggut Chunder, 8 Moo. I. A. 166, Moti Chand* v. *Ganga Pershad, I. L. R. 24 All. 174; L. R. 29 I. A. 40*, and *Nand Kishore Singh* v. *Ram Gulam Sahu, I. L. R. 39 Calc. 1037*, referred to. The question whether a tenancy is to be regarded as one at will, or one of a permanent nature, is a matter in which a substantial question of law is involved. *Maharam* v. *Telamuddin, 15 C. L. J. 220*, and *Raja Mukund Deb* v. *Gopi Nath Sahu, 21 C. L. J. 45*, referred to. Where the plaintiff brought his suit in the Munsif's Court, and paid court-fees on the annual rental of Rs. 4-4, he is not debarred from subsequently raising the point that the property in dispute was in fact of the value of Rs. 11,400. SURENDRA NATH ROY *v.* DWARKA NATH CHAKRAVARTI (1916).

I. L. R. 44 Calc. 119

APPELLATE COURT.

——— **leave to withdraw suit by—**

See JURISDICTION.

I. L. R. 44 Calc. 367

——— **power of—**

See REMAND . **I. L. R. 44 Calc. 929**

——— **power of, to allow the withdrawal of a suit—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 107 (2) AND O. XXIII, R. 1.

I. L. R. 40 Mad. 259

ARBITRATION.

See CIVIL PROCEDURE CODE (1908), SCH. II, PARAS. 16, 21; O. XXIII, R. 3.

I. L. R. 39 All. 401, 489

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), SS. 203 TO 207.

I. L. R. 39 All. 711

1. ——— *Arbitrator giving evidence before colleagues, if improper—Application for reference to arbitration containing provision as to opinion of majority prevailing but reference to arbitration silent on the point—Award of majority, if bad, on this ground—Award made in the absence of party who withdrew from the arbitration, if bad.* A suit was referred to the arbitration of three persons, two of whom were witnesses in the case, one for the plaintiff and one for the defendant. The former of these gave evidence before the two other arbitrators at the instance of the plaintiff. Thereafter the defendant objected to the arbitration going on and intimated that he would not call any evidence before the arbitrators who concluded the arbitration and gave an award, two for the plaintiff and one for the defendant. The application for reference to arbitration contained a provision that the opinion of the majority would prevail but the reference to arbitration did not provide for it. *Held*, that there was no impropriety on the part of the arbitrator who gave evidence before his colleagues. That the application for reference to arbitration having provided that the opinion of the majority would prevail, the award was not bad because of the absence of any such provision in the reference to arbitration. That the defendant having refused to call any evidence before the arbitrators, they were justified in continuing the hearing and giving their award in the absence of the defendant. HARIDAS DUTTA *v.* BAIDYANATH GHOSH (1917) . . . **21 C. W. N. 895**

2. ——— *Civil Procedure Code (Act V of 1908), Sch. II, cls. 1 and 15—Award, when all parties interested did not agree to order of reference, validity of—Partners, some not appearing in a suit against members of the firm, if interested parties—Court, jurisdiction of, to set aside award, when reference invalid—Award, if evidence of a separate agreement between the parties who agreed to the reference.* Where in a suit against the members of a partnership an order was made under cl. 1, Sch. II of the Civil Procedure Code, 1908, referring all the matters in difference between the parties to the suit to arbitration with the consent of all the parties, with the exception of two of the defendants who did not enter appearance, and an award was made thereon:—*Held*, that the order of reference was invalid not only against the parties who did not agree to the order of reference, but also against those who had agreed and the award must be set

ARBITRATION—*concld.*

aside. SETH DOOLY CHAND *v.* MAMUJI MUSAJI (1916) . . . . . **21 C. W. N. 387**

ARBITRATORS.

———— power of—

See CONTRACT ACT (IX OF 1872), SS. 1, 118 . . **I. L. R. 41 Bom. 518**

ARMS ACT (XI OF 1878).

———— s. 19, cl. (*b*)—*Gun found in room equally accessible to several persons, if to be considered as in the possession of any one of them.* A gun was found in an abandoned room of the house belonging to the accused in which the accused who were members of a joint family and others resided. It appeared from the evidence that the room was accessible from outside. The accused were convicted under s. 19 (*b*) of the Indian Arms Act. *Held*, that if the place in which an article is found is one to which several persons have equal right of access it cannot be said to be in the possession of any one of them, and the conviction of the accused could not be sustained. *Jogjiban Ghose* v. *The King-Emperor, 13 C. W. N. 861*, followed. SUDHANYA BAWALI *v.* KING-EMPEROR (1916). **21 C. W. N. 839**

ARREST.

See HABEAS CORPUS. **I. L. R. 44 Calc. 76**

———— warrant to—

See HABEAS CORPUS. **I. L. R. 44 Calc. 459**

ARTIFICIAL CHANNEL.

See MADRAS IRRIGATION CESS. **L. R. 44 I. A. 166**

ASCETIC.

———— sudra, inheritance by—

See HINDU LAW—ADOPTION. **I. L. R. 40 Mad. 846**

ASSAM LAND REVENUE REGULATION (I OF 1886)—

———— ss. 63, 67, 85—

See SALE FOR ARREARS OF REVENUE. **I. L. R. 44 Calc. 412**

ASSAULT.

See RAILWAY PASSENGER. **I. L. R. 44 Calc. 279**

ASSESSED LAND.

———— suit for land and trees, valuation of—

See COURT-FEES ACT (VII OF 1870), S. 7, CL. (V), (B) AND (C). **I. L. R. 40 Mad. 824**

ASSESSMENT.

See COMPENSATION. **I. L. R. 44 Calc. 87**

See INAMDAR . **I. L. R. 41 Bom. 159**

ASSIGNEE.

———— addition of, as plaintiff—

See LIMITATION ACT (XV OF 1877), S. 22 **I. L. R. 40 Mad. 722**

———— right of, to a charge—

See INAMDAR . **I. L. R. 40 Mad. 93**

ASSIGNMENT OF JODI.

———— by Government—

See INAMDAR . **I. L. R. 40 Mad. 93**

ATTACHMENT.

See ATTACHMENT BEFORE JUDGMENT.

See CIVIL PROCEDURE CODE (1908), S. 60. **I. L. R. 39 All. 308**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 60 (*1*). **I. L. R. 40 Mad. 302**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 60 (*c*). **I. L. R. 41 Bom. 475**

See OCCUPANCY HOLDING. **I. L. R. 44 Calc. 720**

———— by creditor—

See INSOLVENCY. **I. L. R. 44 Calc. 1016**

———— of mortgaged property—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS. 278, 282, 283, 287. **I. L. R. 41 Bom. 64**

———— *Alienation by judgment-debtor alleged to be pending the attachment and a fraudulent transfer to a creditor other than decree-holder—Transfer of Property Act (IV of 1882), s. 53—Judgment-debtor preferring one creditor before others—Civil Procedure Code, 1882, ss. 240, 276, 295—Contest between private alienee and decree-holder—Continuance of attachment.* The question in this case was which of two titles to the property in suit was to be preferred, that of the appellant under two deeds of sale executed in her favour on 15th July, 1907, by the judgment-debtor, or that of the respondent (decree-holder) who purchased the property at an auction sale on 23rd August, 1907, in execution proceedings under a decree, dated 3rd January, 1901, which were instituted by an application for attachment on 16th July, 1907. There were two decrees of the High Court at Calcutta, Original Side, against the judgment-debtor, of 24th August, 1896, and 3rd January, 1901, and the respondent was transferee of both decrees, which were sent to the District Court at Murshidabad for execution. On 13th June, 1902, application was made for execution of the decree of 1896, and the proceedings became execution case 8 of 1902; and the execution of the decree of 1901 commenced as above as execution case 16 of 1907. *Held* by the Judicial Committee (reversing the decision of the High Court), that on the evidence, and under the circumstances, of the case the appellant (plaintiff) had the better title. The deeds in her favour were not antedated as alleged, and there was no fraudulent transfer to her within the meaning of s. 53 of the Transfer of Property Act (IV of 1882). The preferring of one creditor to another by the judgment-debtor did not make the transfer a fraudulent one. A debtor, for all that is contained in s. 53, may pay his debts in any order he pleases, and may prefer any creditor he chooses. Nor was the private alienation to the appellant void under s. 276 of the Civil Procedure Code, 1882, as having been made during the continuance of an attachment. The respondent's title rested entirely on the attachement in the execution case 16 of 1907, and that alone was the attachment the continuance of which could avoid the appellant's private alienation; but on the facts it did not do so. The

ATTACHMENT—*concld.*

respondent could not invoke the attachment in execution case 8 of 1902 to defeat the alienation to the appellant which was made in different execution proceedings. Nor could he with its aid rely on s. 295 of the Civil Procedure Code, 1882, as entitling him to the benefit of s. 276. There were no assets in Court which was essential if s. 295 were invoked, and the only attachment within the meaning of s. 276 was that in execution case 16 of 1907 which he could not employ against the appellant. *Sorabji Edulji Warden* v. *Gobind Ramji, I. L. R. 16 Bom. 91,* referred to. MINA KUMARI BIBI *v.* BIJOY SINGH DUDHURIA (1916).

I. L. R. 44 Calc. 662

ATTACHMENT AND SALE.

——— of moveables—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 11 . **I. L. R. 40 Mad. 733**

ATTACHMENT BEFORE JUDGMENT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXVIII, R. 5, SS. 115, 145. **I. L. R. 41 Bom. 402**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 52 . **I. L. R. 40 Mad. 955**

ATTESTATION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 59 . **I. L. R. 41 Bom. 384**

ATTORNEY'S LIEN.

——— *Attorney, if may claim lien on his client's (plaintiff's) decree as against defendant's prior decree against plaintiff—Equities between attorney, client, and others interested in property.* The defendants had obtained a decree against the plaintiffs in a prior suit for Rs.1,451-9-0, including costs, and the plaintiffs in a subsequent suit obtained a decree for Rs. 1,431-8-0 and thereupon the defendants applied that the satisfaction of the plaintiffs' decree might be entered but the attorney of the plaintiffs made an application claiming a lien on the decretal amount of his client. *Held,* that the attorney could not claim any lien on the decree obtained by his client in preference to the claim of the defendants in respect of their prior decree. An attorney's lien is subject to all the equities between the client and the parties interested in the property. Meaning of attorney's lien discussed. *In the matter of* RASIK LAL MULLIK (1916) . . . **21 C. W. N. 106**

AURASA SON.

See HINDU LAW—PARTITION.

I. L. R. 40 Mad. 632

AWARD.

See CIVIL PROCEDURE CODE (1908), SCH. II, PARAS. 15, 16.

I. L. R. 39 All. 489

See CIVIL PROCEDURE CODE (1908), SCH. II, PARAS. 16, 21, O. XXIII, R 3.

I. L. R. 39 All. 401

B

BAIL.

——— application for—

See HABEAS CORPUS.

I. L. R. 44 Calc. 459

BANKRUPTCY.

——— *Straits Settlements Bankruptcy Ordinance—Debt contracted by a Hindu in Singapore—Adjudication of bankruptcy and discharge by the Singapore Court operating to discharge debt—Non-maintainability of a suit in India for the balance of the debt against the bankrupt or his undivided son—Liability of an undivided Hindu son, not a jo nt liability.* A Hindu who was domiciled in India, but who carried on trade in Singapore, was adjudicated a bankrupt by the Supreme Court at Singapore for debts incurred at Singapore and he eventually obtained at Singapore an order of discharge under the Straits Settlements Bankruptcy Ordinance. The plaintiff who, as one of the creditors, proved his debt and received two of the dividends due to him, was a party to the order of discharge. Under the above Ordinance a discharge operated as an extinguishment of the debt: *Held,* that the extinguishment of the debt by the Bankruptcy Laws of Singapore operated as a discharge of it everywhere and the creditor had no right to sue in India the debtor and his undivided sons for the balance of the debt as if it was still subsisting. Under the Hindu Law a Hindu son is not "jointly bound" with his father to pay the debts contracted by the father. Hence the said Ordinance under which a discharge of a bankrupt does not discharge a person "jointly bound" with him does not affect the undivided son. NARAYANAN *v.* VEERAPPA (1916).

I. L. R. 40 Mad. 581

BANKRUPTCY ACT (46 & 47 VICT., C. 52 OF 1883).

——— s. 102—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), SS. 7, 36 AND 90.

I. L. R. 40 Mad. 810

BARGA KABULIYAT.

——— *Agreement to pay rent in kind mentioning equivalent amount in money in case of default—Landlord, if can claim current value of stipulated quantity of produce—Evidence Act (I of 1872), s. 92—Admissibility of oral evidence to modify significance of terms in kabuliyat.* The defendant had executed a *kabuliyat* in favour of the plaintiff, which was headed as a "*barga kabuliyat*", and in the body of the *kabuliyat* he agreed that if he failed to deliver half the crops he would pay Rs. 25 yearly. The plaintiff sued for *barga* rents claiming price of half the produce; defendant pleaded that the plaintiff was entitled to only Rs. 25 yearly according to the *kabuliyat: Held,* on a construction of the *kabuliyat,* that if the tenant made default in giving half the crops the landlord is entitled to recover only the fixed sum of Rs. 25 mentioned in the *kabuliyat,* and that under s. 92 of the Evidence Act, oral evidence is not admissible to show that the sum of Rs. 25 was mentioned in the *kabuliyat* for purposes of registration only. BASIRUDDIN CHOWDHURY *v.* AFSARUNESSA BIBI (1916) . **21 C. W. N. 860**

BARRISTER.

See COUNSEL, DUTIES OF

I. L. R. 44 Calc. 741

——— *Counsel receiving instructions direct from client—Non-return of fees for professional work not performed—Usage and etiquette of the profession—Duties of counsel—Nomination of juniors by seniors and of seniors by juniors, practice*

BARRISTER—*concld.*

of—Practice. The usage of the profession of a barrister that counsel should take his instructions only from an attorney in respect of any professional work on the Original Side of the High Court is a most beneficial one from the point of view of the public and the Bar and, though founded upon no rule of law, ought to be maintained. In a certain suit, counsel accepted a brief containing instructions for him to appear at the trial on behalf of a party and was paid the consultation fee and the fee for attending the trial which were marked thereon. Counsel attended the consultation and subsequently left Calcutta to attend to an urgent professional call, having previously returned the brief to the attorney, but not the fees: *Held,* that counsel should have returned the whole fee (both for consultation and for attending the trial). It was given to him for the purpose of attending the trial, and the consultation was held with a view to his so doing. The practice for seniors to name their juniors, or for juniors to nominate their seniors, is contrary to the traditions of the profession and to its best interests, and such a practice ought to be discouraged. It is, however, quite legitimate for a senior to ask a junior to hold a brief for him when he is temporarily unable to attend to a case. *In re* AN ADVOCATE (1917) **I. L. R. 44 Calc. 741**

BENAMI PURCHASE.

See SALE FOR ARREARS OF REVENUE **I. L. R. 44 Calc. 573**

1. ——— *Benami purchase, allegation of—Proof—Subsequent conduct—Surrounding circumstances—Motive—Suspicion only, if sufficient to justify finding of benami—Loan given by executor to person who succeeds him as executor after his death—Limitation—Previous statements, use of.* Subsequent conduct of the parties affords valuable evidence as to whether the person in whose name a conveyance is taken is intended to be the beneficial owner or a mere *benamidar.* In cases of alleged *benami* purchaser, the decision of the Court ought not to be rested on mere suspicion. Reliance in such a case must be largely placed not only upon the surrounding circumstances and the position of the parties and their relation to one another, but also upon the motives which could govern their actions and their subsequent conduct. Previous statements, unless used to contradict or discount the evidence of a witness given in the suit, cannot be legitimately used, and even then the particular matter or point must be placed before the witness as one for explanation in view of its discrepancy with the evidence tendered. The principle that the effect of the appointment of a debtor to the office of the executor is that the debt due from the debtor-executor is considered to have been paid to him by himself and that the executor is accountable for the amount of his debt as assets is not applicable where the alleged loan was by a former executor to one who subsequently to his death was appointed executor and the loan was already time-barred at the latter date and there was nothing to show that the debt was kept alive up to that date. The principle that the grant of probate operates retrospectively from the date of the death of the testator did not apply here where there was an intermediate executor who created the debt for which the executor who followed him was sought to be made liable as debtor. In a suit for the

BENAMI PURCHASE—*concld.*

construction of a will, and for the administration of the estate left by the testator, the costs, in the absence of grounds established in favour of a departure, should ordinarily be paid out of the estate. UPENDRO NATH NAG *v.* PURENDRO NATH NAG (1915) . . . **21 C. W. N. 280**

2. ——— *Purchaser at a benami sale depositing putni rent, before sale set aside, from money belonging to his beneficiary—Suit to recover, if lies.* Defendant No. 7 made a *benami* purchase at an auction sale of property belonging to defendants Nos. 1 to 7 in the name of plaintiff. The sale was subsequently set aside, but before that date the plaintiff deposited a sum of money in order to save the property from a sale under the Putni Regulation. In a suit by plaintiff the money so deposited was found to have been defendant No. 7's. Defendant No. 7, however, made no claim to it: *Held,* that the plaintiff was entitled to recover the amount deposited. SATYA CHARAN MUKHERJI *v.* DINANATH BISWAS (1916) . . . . **21 C. W. N. 1130**

BENEFIT.

——— **to donor's family—**

See MAHOMEDAN LAW—WAKF. **L. R. 44 I. A. 21**

BENGAL ACTS.

——— **1865—VIII.**

See RENT RECOVERY (UNDER-TENURES) ACT.

——— **1870—VI.**

See VILLAGE CHAUKIDARI ACT.

——— **1879—IX.**

See COURT OF WARDS ACT.

——— **1884—III.**

See BENGAL MUNICIPAL ACT.

——— **1899—III.**

See CALCUTTA MUNICIPAL ACT.

——— **1907—II.**

See EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT.

——— **1911—V.**

See CALCUTTA IMPROVEMENT ACT.

BENGAL MUNICIPAL ACT (BENG. III OF 1884).

——— **s. 61**—*Sale of holding, when owner unknown, for arrears of rates—Purchaser's title, if superior to mortgagee's.* The purchaser of a holding sold under s. 361 of the Bengal Municipal Act does not acquire it free from incumbrances, there being no provision in the Act creating any charge or other preferential right in favour of the purchaser. MOHAMMED SOLEMAN *v.* RAGHUNATH DUTTA (1917) . . . **21 C. W. N. 425**

——— **s. 155**—*The two-mile limit within which private ferry-boats may not ply, if a radius of two miles from Municipal ferry or two miles along the bank—Reference to another Statute when provision not ambiguous—Construction of Statute—Interpretation of penal provision.* The distance of two miles above and below the Municipal ferry within which private persons are prohibited from

BENGAL MUNICIPAL ACT (BENG. III OF 1884)—*concld.*

——— **s. 155**—*concld.*

keeping a ferry-boat for the purpose of plying for hire without leave by s. 155 of the Bengal Municipal Act means distance along the banks of the river. The section cannot be construed in the light of the provisions of s. 16 of the Public Ferries Act, having regard specially to s. 4 of that Act. *Per* Richardson, *J.*—To come within the prohibition of that section the *terminus a quo* and the *terminus ad quem* of the unlicensed boat must both be within the prescribed area. KASIM ALI *v.* CHAIRMAN OF THE MUNICIPAL COMMISSIONERS OF CHITTAGONG (1916) . . **21 C. W. N. 601**

——— **ss. 178, 179**—*Procedure preliminary to prosecution—s. 218.* The accused was served with a notice by the Municipality requiring him to remove a fence which was said to be an obstruction. The accused preferred an objection, whereupon the Chairman passed an order to move the District Magistrate for the prosecution of the accused. He was then tried and convicted under s. 218: *Held*, that there was a compliance with ss. 175, 176 of the Act but not with ss. 178, 179. There being thus a failure to observe the essential preliminary steps before an application could be made to the Magistrate under s. 202 the proceedings were without jurisdiction. NOBIN CHANDRA AICH *v.* NOAKHALI MUNICIPALITY (1916) . . **21 C. W. N. 470**

BENGAL REGULATION (I OF 1793).

——— **s. 8, cl. (4)**—

See CHAUKIDARI CHAKARAN LANDS.
I. L. R. 44 Calc. 841

BENGAL TENANCY ACT (VIII OF 1885).

——— **s. 5**—*Tenure-holder or raiyat—Reclamation lease if necessarily raiyati lease—"Raiyat" used loosely for all tenants—"Korfa" if, means "under-raiyat only"—Suit to establish plaintiff's status as raiyat—Under-tenant if necessary party.* Casual mention of the tenants as 'raiyats' in judgments in suits in which no issue had been framed or question raised as to the status of the tenants cannot be regarded as the recognition by Courts of the tenants' status as raiyats. The word "raiyat" is sometimes used in official documents to mean tenants in general. A "korfa" tenant is not necessarily an under-tenant of a raiyat. He is a sub-lessee, whether of a *talukdar* or of a raiyat. The reservation by the *chakdars* of certain portions of the land for their own cultivation did not militate against the conclusion that they were tenure-holders. The definition of "tenure-holder" in s. 5 (*1*) of the Bengal Tenancy Act merely formulates the pre-existing law and the insertion of the words "bringing it (the land) under cultivation by establishing tenants in it" introduced no change in the law. The section subject to s. 195 applies to tenancies created before, as well as after, the Bengal Tenancy Act. In a suit to establish the status of the plaintiffs as raiyats the under-tenants are proper, but not necessary, parties. Reclamation lease if necessarily raiyati lease, considered. SECRETARY OF STATE FOR INDIA *v.* JADAV CHANDRA MISRA (1916) . . . . **21 C. W. N. 452**

——— **s. 5, cl. (5)**—*Its effect—Presumption applicable to a tenancy existing before the commencement of the Bengal Tenancy Act.* Cl. (*5*) of s. 5 does not create any new rights or purport to affect any right created before the commencement of the Bengal Tenancy Act. It simply furnishes a mode of proof of the character of tenancies of certain descriptions. If the area held by a tenant exceeds 100 standard bighas, and a question arises as to the status of such a tenant, the Legislature lays down that the tenancy is to be presumed to be that of a tenure-holder, but the presumption thus raised is rebuttable. The clause is, consequently, a provision not of substantive, but of adjective, law. It lays down a presumption and changes the burden of proof. Whereas in the absence of the presumption the party who affirmed that the tenancy was of particular description would have to give evidence in support of his contention; the presumption, where it applies, relieves the party relying thereon from the obligation to furnish such proof in the first instance. There is no valid reason why the presumption should not be applied to a tenancy which existed before the commencement of the Bengal Tenancy Act. The presumption embodied in s. 5, clause (*5*) does not incorporate a novel principle into our law but merely codifies what had been a recognized doctrine under the old law. The only difference caused by the adoption of the presumption is that we have now a definite rule of evidence, a crystallized mode of proof. *Dhanput Singh* v. *Gooman Singh, (1864), W. R. Gap., Act X, 61, Gopee Mohun* v. *Sibchunder, 1 W. R. 68, Sarat Chandra* v. *Ratubuddin, 16 C. L. J. 271, Cogdell* v. *Railway Co., 132 N. C. 852,* followed. The fact that a tenancy had been sub-divided into two tenancies before the Bengal Tenancy Act would not prevent the application of sub-s. (*5*) of s. 5 in determining the character of the tenancy. The tenure was divisible, and the fact of subdivision was not a breach of its continuity. Each fragment carved out of the original tenure retained its incident. *Adit* v. *Sukhraj, 17 C. L. J. 435, Chandra Kanta* v. *Ram Krishna, 20 C. W. N. 1002,* followed. Proof of the purpose of the original grant determines the real nature of the tenancy. *Durga* v. *Kalidas, 9 C. L. R. 449, Promotho Nath Kumar* v. *Nilmoni Kumar, 14 C. L. J. 38, Promoda Nath Roy* v. *Asir-uddin Mandal, 15 C. W. N. 896,* followed. *Mahabir* v. *Fox, 9 C. L. J. 467, Buzlul Karim* v. *Satish Chandra, 13 C. L. J. 418, Nityananda* v. *Nanda Kumar, 13 C. L. J. 415, In re School Board Election for Parish of Pulborough [1894], 1 Q. B. 725, In re Athlumney [1898], 2 Q. B. 547, Main* v. *Stark, 15 App. Cas. 384, Reynolds* v. *Attorney-General [1896], A. C. 240, Bengal Indigo Company* v. *Roghobur Das, I. L. R. 24 Calc.* 272, referred to. *Maharam Chaprasi* v. *Telam-ud-din Khan, 15 C. L. J. 220,* distinguished. JAGABANDHU SHAHA *v.* MAGNAMOYI DASSEE (1916). **I. L. R. 44 Calc. 555**

——— **ss. 5** (*1*), (*2*), (*5*), **19**—*Lease before the Act—Land partly cultivated by tenant, if necessarily raiyati—Reclaiming lease, land taken to be cultivated by settling tenants area exceeding 100 bighas—Evidence of conduct if admissible when lease unambiguous—Tenant recorded "raiyat" without contest* S. 5 (*5*) of the Bengal Tenancy

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 5**—*concld.*

Act applies to tenancies created before the Act. The Bengal Tenancy Act which was intended to regulate the relations of the various classes of the agricultural community, applies and was intended to apply to tenancies in respect of agricultural land whether created before or after the passing of the Act. Where a *prajagiri* settlement was made of land in area far in excess of what is usually held by a raiyat, and the full rent was payable after a period—a term which usually finds place in leases of tenures: *Held*, that the word "*praja*" means a tenant—and the presumption that the lease was a tenure applied and was not negatived by the fact that by the terms of the lease the lessee undertook to reclaim jungle "in the hope of acquiring a *jungleburi* right in future" and was to "continue to hold and enjoy the lands from heirs to heirs by bringing the land under cultivation by settling tenants". The definition of a tenure as contained in the Bengal Tenancy Act (s. 5, sub-s. *1*) introduced no new law, and in any case the Act applies to a tenancy created before the passing of the Act. *Held*, that the language of the lease being consistent only with the interest granted thereby being a tenure, evidence of the subsequent conduct of the parties was inadmissible. The rule is that evidence may be given to explain but not to contradict documents the meaning of which is doubtful and such evidence may consist of proof of the mode in which property has been held and enjoyed thereunder. But where the meaning of the words in the document is unambiguous the subsequent acts of the parties are not admissible to construe it whether the document be ancient or modern. Where in a proceeding under Reg. VII of 1822 held in 1877 it was clear that there was no dispute as to the status of the tenant within s. 14 and no official proceedings were incorporated in the *rubekari* of settlement, the mere fact that the tenant was recorded as a raiyat does not preclude the Government from contesting his claim as such, especially as at the time of the record the sharp distinction which now exists between raiyats and tenure-holders was not so well recognized. SECRETARY OF STATE FOR INDIA *v.* GOVIND PRASHAD BARIK (1916) . . . **21 C. W. N. 505**

——— **s. 18**—*Raiyat holding at fixed rate, if can cut and appropriate trees—Trees—Presumption under s. 50 as to fixity of rent, if applicable in a Small Cause Court suit—Status of tenant, if can be determined in such suit.* A raiyat holding at a fixed rate of rent has the right to cut and appropriate trees. RADHIKA NATH RAY *v.* SAMIR FAKIR (1917) . . . **21 C. W. N. 636**

——— **s. 19**—Section19 of the Bengal Tenancy Act can refer only to persons who, being raiyats within the definition to be found in s. 5, had acquired a right of occupancy prior to the passing of the Act. SECRETARY OF STATE *v.* GOVIND PRASHAD BARIK . (1916) **21 C. W.N. 505**

——— **s. 45**—

SCH. III, CL. 1 (*a*)—

See NON-OCCUPANCY RAIYAT.

I. L. R. 44 Calc. 267

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 49, cl. (b)**—

See OCCUPANCY HOLDING.

I. L. R. 44 Calc. 272

——— **ss. 67, 179**—*Permanent mokurari lease—Stipulation to pay interest on arrears of rent "at 75 per cent with full damages", if by way of penalty—Contract Act (IX of 1872), s. 74—Mere high rate, if sufficient to demand interference—Facts and circumstances to be proved—Position of tenant under permanent lease and a debtor compared—Onus of proof. Per* N. R. CHATTERJEA, *J.*—S. 179 of the Bengal Tenancy Act does not exclude the consideration of the question whether a stipulation in a permanent *mokurari* lease to pay interest at a higher rate than that provided by s. 67 is affected by provisions of law other than the Bengal Tenancy Act, and although Courts should not lightly interfere with contracts between landlords and tenants in cases of permanent *mokurari* leases, a stipulation for payment of interest on arrears of rent at rate which is unconscionable should not be allowed to be enforced even in such cases. No hard and fast rule can be laid down as to what is unconscionable and exorbitant, which must be determined with regard to the facts of each case. Interest represents compensation for the detention of the rent and a stipulation in a *mokurari* lease to pay "75 per cent interest plus full damages" appears rather to have been intended as an effective means of securing punctual performance of the contract than represent the damages which the landlord was to suffer by reason of non-payment of the rent. *Per* RICHARDSON, *J.*—The lessee of a permanent lease at an invariable rent is not *prima facie* entitled to the indulgent consideration which might be extended to a needy and improvident debtor in the clutches of a grasping moneylender, and though it may be that the provisions of s. 179 of the Bengal Tenancy Act must be read subject to the power of the Court to intervene under the Contract Act, they cannot be overlooked or left out of account. Stipulation to pay interest at a high rate may be proved to be one by way of penalty, but to justify an inference that it is so, it is not enough to show that it was a hard bargain. In general, evidence of facts and circumstances outside the contract is necessary to justify the Court's interference. The onus to prove such circumstances is on the lessee. NABO KUMAR CHUCKERBUTTY *v.* SYED ABDUL JUBBER MIYAN (1916).

21 C. W. N. 112

——— **ss. 74, 179**—*Written lease—A definite amount over and above amount stated as rent, but forming part of consideration, if abwab—High rate of interest and damages in mokurari lease, if penalty—Contract Act (IX of 1872), s. 74.* The question whether any particular item is or is not an *abwab* must depend upon the construction of the contract of lease in each case, and the question in each case is whether the sum claimed is really part of the rent agreed upon to be paid as consideration for the lease. The question whether in a case where there is a written engagement, specified sum which is neither indefinite nor arbitrary and which is agreed upon to be paid as part of the rent in the lease creating the tenancy, can be recovered, was not

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 74, 79**—*concld.*

referred to the Full Bench in *Radha Prosad Singh* v. *Bal Kower Koeri, I. L. R. 17 Calc. 726.* A stipulation in a *kabuliyat* creating a *mokurari* lease to pay interest at 75 per cent on arrears of rent and damages at 300 per cent is intended to secure punctual payment of rent rather than represent the loss to which the landlord is put for the non-payment of the rent. Being by way of penalty such a stipulation comes under s. 74 of the Contract Act, and is also unconscionable. UPENDRA LAL GUPTA *v.* MEHERAJ BIBI (1916). **21 C. W. N. 108**

——— **s. 85 (*1*), construction of—**

See TITLE . . **I. L. R. 44 Calc. 771**

——— **s. 93**—*Common manager, appointment of—Dispute amongst some co-sharers as to their shares—"Estate", meaning of—Opening of separate accounts, if bars appointment of manager to whole estate.* A dispute between some of the co-owners of an estate as to the management of their share is sufficient for the appointment of a common manager of the estate under s. 93 of the Bengal Tenancy Act. A dispute as to the terms on which, or the person with whom, a particular holding or a number of holdings should be settled, is a dispute as to the management of the estate though only a part of the estate is involved. A dispute as to the boundaries between the common estate of the co-owners and another contiguous estate of which one of the co-owners of the common estate is the sole proprietor, is not a bar to the appointment of a common manager when there are other disputes between the co-owners. An estate remains a single estate for revenue purposes though separate accounts may have been opened in respect of it. SARADINDU RAY *v.* GRISH MOHINI DEBI (1916) . **21 C. W. N. 240**

——— **s. 95—**

See COMMON MANAGER

I. L. R. 44 Calc. 800

——— **s. 104H**—*Suit under.* In a suit under s. 104H of the Act by tenants who had been recorded as tenure-holders to have themselves recorded as raiyats, the Court cannot disturb the rent settled unless the plaintiffs succeed in showing under s. 104H (*3*), (*e*), that in the record-of-rights their status has been wrongly recorded. SECRETARY OF STATE *v.* GOVIND PRASHAD BARIK (1916) . **21 C. W. N. 505**

——— **s. 105A, cl.** (*c*)—*Record-of-rights—Dispute as to correctness of entry—Settlement of fair rent, application for, by landlord—Issue raised under cl.* (*e*) *of s. 105A as to whether tenant is raiyat or tenure-holder, if can be tried in absence of under-raiyat—Non-joinder—Necessary party—Under-raiyat if necessary party—Additional rent, claim for, under the terms of a lease, if triable under ss. 105 and 105A.* Where in an application for settlement of fair and equitable rent under s. 105 of the Bengal Tenancy Act the landlord disputed the correctness of the entry of the tenants in the record-of-rights as tenure-holders and asserted that the tenants were raiyats and liable to pay rent as such, and an issue was raised upon this question but the Revenue Officer refused to try this issue on the ground that for that purpose the under-tenants were necessary parties:

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 105A, cl.** (*c*)—*concld.*

Held, that the issue raised was triable under the provisions of s. 105A, cl. (*e*), in the absence of the under-tenants. The under-tenants, if they had been joined as parties, would have been proper parties, but they were not necessary parties in the sense that the proceedings must fail in their absence. Where the landlord claimed rent not only under s. 52 of the Bengal Tenancy Act, but also on the ground that he was entitled, under the terms of the lease executed by the tenants, to rent for the whole area actually in the possession of the tenants: *Held*, that the question was triable under ss. 105 and 105A of the Bengal Tenancy Act. In settling a fair rent under s. 105, though cl. 4 says he is to have regard to the rules laid down in the Act, there is nothing to prevent a Revenue Officer and a Court from taking into consideration the terms and conditions embodied in a lease or other written document by which the rights of the parties are regulated. JOGENDRO MOHAN DAS *v.* JANAKINATH SAHA (1916) . **21 C. W. N. 427**

——— **s. 106**—*Suit under—Plaintiff, if may pray merely for a negative declaration that entry erroneous—Duty of Settlement Officer to record facts as at date of record-of-rights.* In a suit under s. 106 of the Bengal Tenancy Act the plaintiff is not entitled to a declaration that a specific entry in the record-of-rights is not correct as it stands, he must go further and establish in what respect it is incorrect and how it should be amended; if he is unable to do this his suit must fail. It is the duty of the Settlement Officer to enter in the record-of-rights the rent payable at the time the record-of-rights is in course of preparation. When, therefore, it appears to him that the landlord has evicted the tenant from a portion of the land of his tenancy he is correct in showing that no rent is payable by the tenant to the landlord for the lands recorded as in his possession. DWIJENDRONATH RAY CHOWDHURY *v.* AFTABUDDI SARDAR (1916). **21 C. W. N. 492**

——— **s. 109**—*Its scope and operation.* To attract the operation of s. 109 of the Bengal Tenancy Act it is essential to establish that the civil suit has for its subject a matter which has already formed the subject of an application under s. 105. The introduction of s. 105A has not altered the scope of s. 109 which must be construed on the same lines as before the introduction of s. 105A. It cannot be held under s. 109 that a matter has been the subject of an application under s. 105 whenever it might, if the defendant had so chosen, have been raised and decided under s. 105 read with s. 105A. To hold that would be to read into s. 109 words which are not there. *Pandab Dowari* v. *Ananda Kisun, 14 C. W. N. 897, Shashi Bhusan* v. *Eshabar Ali, 19 C. W. N. 636, Sasi Bhusan Hazra* v. *Aswini Kumar Samanta, 19 C. W. N. 637* (*n*), referred to. NAWAB BAHADUR OF MURSHIDABAD *v.* AHMAD HOSSEIN (1916) . **I. L. R. 44 Calc. 783**

——— **s. 111 A—**

See COURT-FEE.

I. L. R. 44 Calc. 352

——— **s. 111B**—*Suit brought within the prohibited period—Proper procedure—Rejection or*

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 111B—*concld.*

return of plaint at once—Civil Procedure Code (Act V of 1908), O. VII, rr. 10 and 11—Plaint kept in the file until expiry of three months—Suit, if may be dismissed later on—Jurisdiction of the Court to proceed to try suit on the merits. In view of the provision of s. 111B of the Bengal Tenancy Act that a suit shall not be instituted in any Civil Court for the decision of certain issues within three months from the date of the certificate of final publication of the record-of-rights the proper course for the Court, when such a suit is brought within that period, is to reject the plaint under O. VII, r. 11, cl. (*d*), of the Civil Procedure Code. If, the defect being overlooked, the plaint is registered, the Court, on subsequently discovering it when the three months have expired, would not be justified in dismissing the suit. As the section does not take away the Civil Court's jurisdiction altogether it should, in such a case, proceed to try the suit on the merits. *Per* RICHARDSON, *J.*—If a plaint presented during the prohibited period be not at once returned or rejected under O. VII, r. 10 or r. 11 of the Civil Procedure Code (as the Legislature undoubtedly contemplates), and remains on the file of the Court, the suit may be treated, subject always to any question arising under s. 109, as though the plaint had been received and the suit instituted on the day following the expiration of such period. PRAN KRISHNA SHAHA *v.* KRIPANATH CHOWDHURY (1916).
21 C. W. N. 209

——— s. 113—

1. ——— *Stipulation for payment of additional rent on waste land becoming cultivated—Realization of the same.* Where there is a stipulation between a landlord and his tenants that the *khila* lands included in the tenancy would be assessed with rent on becoming *hasila* the increase in the rental would accrue automatically on any portion of the waste becoming cultivated. To such a process neither s. 113 nor any other section of the Bengal Tenancy Act can operate as a legal bar. The mere realization of the admitted rent for the years before suit does not preclude the landlord from recovering additional rent for the same period for such lands where there is nothing to show that the landlord received his dues and the tenants paid him, on the understanding that no further demand would be made. MAKBUL ALI *v.* JOGESH CHANDRA ROY (1910) . . . . **21 C. W. N. 534**

2. ——— *Application and scope of, if controlled by s. 103B—Enhancement of rent settled under Chap. X.* S. 113 of the Bengal Tenancy Act applies to rents settled under Chap. X. Where rent is finally settled under one or other of those provisions it cannot be enhanced except on grounds mentioned in the section within the period mentioned therein. A consideration of Chap. X as a whole shows that the effect of the plain language of s. 113 is not in any way controlled or cut down by anything in s. 103B. MIYAJAN BHUIYAN *v.* SRIMATI JOYMALA (1916) . . . . **21 C. W. N. 546**

——— s. 155 (3)—

See DECREE . **I. L. R. 44 Calc. 954**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 160, cl. (*g*)—*Protected interest—Sepatni created by darputnidar authorized in darputni lease to create such encumbrance if a protected interest—Separate document expressly giving permission executed at the time when encumbrance created if necessary—S. 167.* A *darputni* lease expressly stated that the *darputnidar* would have authority to grant a *sepatni* and pursuant to the power so conferred the *darputnidar* created a *sepatni : Held*, that the lease contained an express permission in writing sufficient for the purpose of cl. (*g*) of s. 160, Bengal Tenancy Act, and the *sepatni* was a protected interest which could not be annulled under the provisions of s. 167, Bengal Tenancy Act. That s. 160 (*g*) does not contemplate that the permission should be expressly given at the time of the creation of the encumbrance by a document especially executed in this behalf. BIDHU MUKHI CHOWDHURANI *v.* ASMATULLA (1916) . . . **21 C. W. N. 829**

——— s. 161—*Person acquiring title by adverse possession against sub-tenant, if an 'incumbrancer' and if entitled to notice.* When a person has by adverse possession against a sub-tenant acquired a statutory title to a portion of the lands comprised in the sub-tenancy he has an interest in the sub-tenancy so that when on a sale of the superior tenancy for arrears of rent the purchaser seeks to annul the sub-tenancy as an "incumbrance" such person stands in the position of an incumbrancer and is entitled to notice under s. 167 of the Bengal Tenancy Act. BHUSAN CHANDRA GHOSH *v.* SRIKANTA BANERJI (1916).
21 C. W. N. 155

——— s. 167—*Sale of an under-tenure under—Effect of the sale, in case the landlord ceased to be the sole 'landlord' at the date of sale—If the sale passes the under-tenure to the purchaser free of incumbrances—Effect of the cessation, partial or entire, of the interest of the landlord on his right to enforce realization of arrears of rent by sale of the tenancy—Propriety of applying isolated dicta from judicial precedents to cases where the facts are different in essential particulars.* Plaintiff obtained in February, 1908, a rent decree against an under-tenure-holder and applied for execution of the decree in accordance with the special procedure prescribed in Chap. XIV of the Bengal Tenancy Act. In January, 1909, one-half share of the plaintiff's interest as superior landlord was sold in execution of a mortgage decree. In February, 1909, the defaulting under-tenure was sold in execution. The defendants declined to deliver up possession to plaintiff-purchaser on the allegation that they were in possession as holders of a subordinate under-tenure lawfully created by the defaulter. In 1911 plaintiff brought the present suit to eject the defendants, who pleaded that, the plaintiff having ceased to be the sole landlord at the date of the sale (February 1909), the sale was not one under the Bengal Tenancy Act, but only a sale of the right, title, and interest of the judgment-debtor under the Civil Procedure Code : *Held*, that where the decree-holder continued to be the sole landlord at the date of the application for execution of the decree, and in his character as landlord decree-holder took the necessary steps for the sale of the under-tenure in conformity with statutory provisions, the effect of the execution sale was to pass the

BENGAL TENANCY ACT (VIII OF 1885)— *contd.*

——— s. 167—*concld.*

under-tenure to the purchaser even though the decree-holder had lost his interest as landlord before the actual sale. The legal effect of the sale depends upon the character of the proceedings in execution duly taken and not upon the relative situation of the parties at the moment of the sale : *Held*, further, that to apply isolated dicta from a judgment of the Judicial Committee to a case where the facts are in essential particulars different would be a manifest abuse of judicial precedents. SYEDUNNESSA KHATUN *v.* AMIRUDDI (1917) . . . . **21 C. W. N. 847**

——— ss. 167, 173—*Sale of mokurari tenure for arrears of rent—Benamidar of purchaser, if can annul incumbrance under s. 167—Duty of Collector in such a case—Effect of s. 173—Specific Relief Act (I of 1877), s. 45—Application of the section by the High Court, when warranted.* A *mokurari* tenure was sold for arrears of rent and purchased in the name of the plaintiff who was proved to be the *benamidar* for one of the judgment-debtors. On the Collector refusing to issue notices under s. 167, Bengal Tenancy Act, for annulling incumbrances on the application of the plaintiff, he sued for a declaration that he had power to annul the incumbrances under s. 167 and that the Collector was bound to issue and cause notices to be served : *Held*, that this was not a case where the Courts should be asked to give equitable relief by directing a public servant to exercise his powers under s. 167, Bengal Tenancy Act, and the suit was rightly dismissed. That, even assuming that the Collector should have issued notice on the requisition of the person in whose name the sale certificate stood, the Court had to consider whether it would in equity be right to require him to do the specific act in question, seeing that thereby the law prohibiting purchase by the judgment-debtor would be defeated. MOHAMMED SIDDIQ *v.* BABU DURGA PROSHAD (1915) . . . . **21 C. W. N. 342**

——— Sch. III, Art. 3—

1. ——— *Landlord purchasing raiyati-holding at rent-sale and ousting tenant—Suit by tenant to recover—Limitation.* Where the landlord of a raiyati-holding caused it to be sold in execution of a rent-decree, purchased it, and settled it with new tenants, a suit by the former raiyat to recover the holding would be governed by Art. 3, Sch. III of the Bengal Tenancy Act. SATISH CHANDRA BOSU *v.* NITYA GOPAL HALDER (1917) . . . . . **21 C. W. N. 978**

2. ——— *Limitation—Dispossession by purchaser at sale held at landlord's instance, if comes within article.* Dispossession by the purchaser, at a sale held at the instance of the landlord, is not dispossession by or at the instance of or in collusion with the landlord and the two years' rule of limitation is not applicable to a suit for recovery of possession in such a case. DURGAPADA PANJA *v.* BHUSAN CH. GHOSH (1916). **21 C. W. N. 373**

3. ——— *Purchase of holding by landlord in execution and consequent dispossession of raiyat—Limitation.* Art. 3 of Sch. III to the Bengal Tenancy Act applies even when the tenant has been dispossessed by the landlord on the strength of a purchase of the holding in execution.

BENGAL TENANCY ACT (VIII OF 1885)— *concld.*

——— Sch. III, Art. 3—*concld.*

FANI BHUSHAN SARKAR *v.* PULIN CHANDRA MANDAL (1916) . . . . **21 C. W. N. 976**

BEQUEST.

——— in connection witL khairat—

See CUTCHI MEMONS.
I. L. R. 41 Bom. 181

BEQUEST TO DAUGHTER.

See HINDU LAW—JOINT FAMILY.
I. L. R. 40 Mad. 1122

BHAGCHASIS.

——— *Bhagchasis* are persons who cultivate land rendering a share of the produce to the landlord. They may or may not have an interest in the land, but are not "hired servants" as mentioned in s. 5 (2) of the Bengal Tenancy Act. The statement that "*bhagchasis*" who are elsewhere called "*bhagdars*", *burgadars*", "*bataidars*", or "*adhiars*" are in general mere labourers is contrary to experience and in this case contrary also to the presumption arising under s. 103B of the Act. SECRETARY OF STATE *v.* GOBINDO PRASHAD BARIK (1916).
21 C. W. N. 505

BHAGDARI PROPERTY.

See MAHOMEDAN LAW—WILL.
I. L. R. 41 Bom. 377

BICYCLE.

——— whether a vehicle—

See BOMBAY DISTRICT POLICE ACT (BOM. ACT IV OF 1890), S. 61, CL. (*b*).
I. L. R. 41 Bom. 464

BID.

——— leave to—

See MORTGAGOR AND MORTGAGEE.
I. L. R. 41 Bom. 357

BILL OF EXCHANGE.

——— *Drawer of the bill, an alien—Bill drawn against goods consigned from an enemy port by an enemy steamer—Shipping documents signed by an alien—Acceptance of the bill by a British subject—Acceptance unqualified and unconditional—War breaking out after acceptance—The enemy steamer arriving at Bombay before the outbreak of war but subsequently harbouring in a neutral port to evade capture without discharging cargo—The Royal Proclamation dated 5th August warning persons not to obtain goods from the German Empire—Bill dishonoured by non-payment on due date—Shipping documents tendered by the holder of the bill—Proclamation dated 12th December, 1914, authorizing British subjects to obtain goods from an enemy steamer in neutral port—The Negotiable Instruments Act (XXVI of 1881), ss. 32 and 43—Property in the goods vests in the acceptor, though the bill of lading remains with the holder of the bill of exchange to secure the price—Consideration does not fail if the acceptor is put in a position to take delivery of the goods.* The plaintiffs were a British bank carrying on business in London, Bombay, and elsewhere. The defendants were a firm of merchants, British subjects, carrying on business in Bombay. On the 24th June, 1914, one G. A. a German residing in Hamburg, drew a bill of

BILL OF EXCHANGE—*concld.*

exchange upon the defendants in favour of the plaintiffs for £65-0-6 payable at thirty days' sight to the order of the plaintiffs—value received—which the drawees were to place to the account of the drawer as advised. The bill purported to be drawn upon the defendants against 50 bales of goods per *S.S. Lichtenfels*, a German steamer. The bill was presented to the defendants for acceptance with the shipping documents relating to the bales of goods mentioned in the bill and was accepted by them on 20th July, 1914, payable at the office of the plaintiffs in Bombay. The *S.S. Lichtenfels* reached Bombay just before the outbreak of war between Great Britain and Germany (*i.e.*, 4th August, 1914), and in order to evade capture left Bombay and took shelter in the neutral port of Marmagoa. The bill was presented for payment on the due date with the shipping documents for the 50 bales attached but was dishonoured by non-payment. On the 12th December, 1914, a Proclamation was issued by which all British subjects residing or carrying on business in British India were authorized to make payments for the purpose of obtaining their cargoes in neutral ports to the agents of shipowners resident in an enemy country. The plaintiffs filed this suit on the 30th September, 1915, to recover the amount due on the bill, contending that the defendant's acceptance was unqualified and absolute and that as the shipping documents for the goods mentioned in the bill of exchange were tendered at the time of presentation for payment, they were entitled to payment according to the terms of the bill and the acceptance. The defendants contended that the acceptance was qualified subject to the condition that the defendants should be put in a position to get the delivery of the goods referred to in the bill of lading, and that, owing to the outbreak of war and the King's Proclamation published in Bombay on the 7th August, 1914, warning persons not to obtain goods from any person resident in the German Empire, the shipping documents ceased to be any consideration for the acceptance. *Held*, (*i*) that in either view of the acceptance the plaintiffs were entitled to succeed, inasmuch as if the acceptance was unqualified the defendants were bound to pay on due date, and if the acceptance was qualified they were bound to pay "at or after maturity" when the money was demanded after the Proclamation of December, 1914, whereunder consignees were permitted to take devliery of goods from enemy ships in neutral ports, and (*ii*) the consideration for the acceptance did not fail as the last-mentioned Proclamation permitted performance before it was too late of the condition alleged. MOTISHAW & Co. *v.* THE MERCANTILE BANK OF INDIA (1916) . **I. L. R. 41 Bom. 566**

BILL OF LADING.

See CHARTER-PARTY
I. L. R. 41 Bom. 119

BIRTH.

See SUCCESSION ACT (X OF 1865), SS. 7, 9, 10 . **I. L. R. 41 Bom. 687**

BLINDNESS.

See HINDU LAW—PARTITION.
L. R. 44 I. A. 229

BOMBAY ACTS

——— 1874—III.

See HEREDITARY OFFICES ACT, BOMBAY.

BOMBAY ACTS—*concld.*

——— 1879—V.

See LAND REVENUE CODE, BOMBAY.

——— 1879—XVII.

See DEKKHAN AGRICULTURISTS' RELIEF ACT.

——— 1881—XXI.

See BROACH AND KAIRA INCUMBERED ESTATES ACT.

——— 1887—IV.

See BOMBAY PREVENTION OF GAMBLING ACT.

——— 1888—III.

See BOMBAY MUNICIPAL ACT.

——— 1890—IV.

See BOMBAY DISTRICT POLICE ACT.

——— 1901—III.

See BOMBAY DISTRICT MUNICIPALITIES ACT.

——— 1910—III.

See HEREDITARY OFFICES (AMENDMENT) ACT.

BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901).

——— s. 3, cl. (7)—*Building, interpretation of—Wire-fence is not a building.* The term "building" as defined in s. 3, cl. (7) of the Bombay District Municipalities Act, 1901, does not include an ordinary wire-fence. EMPEROR *v.* RANCHODLAL (1917) . . . **I. L. R. 41 Bom. 563**

BOMBAY DISTRICT POLICE ACT (BOM. IV OF 1890).

——— s. 61, cl. (*b*)—*Disregarding rule of the road—Driving a bicycle on a wrong side of the road—Vehicle—Bicycle.* A bicycle is a vehicle within the meaning of the word as used in cl. (*b*) of s. 61 of the District Police Act (Bombay Act IV of 1890). EMPEROR *v.* KIKABHAI (1917).
I. L. R. 41 Bom. 464

——— ss. 63 (b), 80 (3)—*Complaint against police officer for vexatiously seizing property—Limitation for the application.* On the 2nd March, 1916, certain property was seized from the applicant by a police officer. The applicant was tried by a Magistrate and acquitted; and the property was returned to him on the 30th October, 1916. The applicant applied, under s. 63 (*b*) of the Bombay District Police Act (Bombay Act IV of 1890), charging the police officer with vexatiously seizing the property. It was objected that the application not having been made within six months from the date of the seizure was time-barred under s. 80 (*3*) of the Act. *Held*, that the application was not barred by s. 80 (*3*), for the act complained of was the whole act of seizure by the police, which must be taken to have been a continuous act so long as the seizure by the police was maintained. MADHAV GANPATPRASAD *v.* MAJIDKHAN (1917) . **I. L. R. 41 Bom. 737**

BOMBAY MUNICIPAL ACT (BOM. III OF 1888).

——— s. 289—

See RAILWAYS ACT (IX OF 1890) S. 7.
I. L. R. 41 Bom. 291

BOMBAY MUNICIPAL ACT (BOM. III OF 1888)—*concld.*

——— **s. 349B**—*Height of building—Addition of bath-rooms at the top in the rear of the building—Raising the height.* The applicant was convicted of infringing the provisions of s. 349B of the City of Bombay Municipal Act (Bombay Act III of 1888) in that he added small bath-rooms to the third and fourth floors of his old residential house, though the additions fell below the original height of the house. The applicant having applied: *Held*, reversing the conviction, that the act of the accused fell outside the purview of s. 349B of the Act because he had neither erected nor raised his building within the meaning of the section. EMPEROR *v.* KALLIANJI (1917). **I. L. R. 41 Bom. 741**

——— **ss. 418, 461, cl. (*o*)**—*Bye-law for weights and measures—Validity of the bye-law—Recognition of certain measures only for standardization—All measures in use should be recognized—Measures of phara and pyli—New measures of maplo and mapli.* The Municipal Corporation of the City of Bombay framed the following bye-law under the powers vested in them by s. 461, cl. (*o*) of the City of Bombay Municipal Act (Bom. Act III of 1888):—"No tenant or occupier of a shop, stall, or godown or standing in a private market shall keep at such shop, stall, godown, or standing any weight or measure which has not been duly verified by comparison with the standard weight or measure and stamped in accordance with the provisions of ss. 418 and 419 of the Act" *Held*, that the bye-law was invalid under the Municipal Act in so far as it prohibited the keeping, for use in a private market, of a measure which had been in use in the City but of which no standard had been kept by the Commisssioner as required by s. 418 of the Act. *In re* JIVRAJ DHANJI (1917) . . **I. L. R. 41 Bom. 580**

BOMBAY PREVENTION OF GAMBLING ACT (BOM. IV OF 1887).

——— **s. 12**—*Gambling in the courtyard of a mosque—Sentence.* The accused who were peons and mill-hands betook themselves on a hot afternoon to the cool shades of a musjid where they amused themselves by playing cards for very insignificant stakes. They were convicted for an offence under s. 12 of the Bombay Prevention of Gambling Act, 1887, and sentenced to undergo simple imprisonment for fifteen days: *Held*, that the sentence passed was, under the circumstances, out of proportion to the criminality of the acts charged; and that a sentence of small fine would have been adequate. EMPEROR *v.* MAHOMED NATHU (1916) . . **I. L. R. 41 Bom. 149**

BOMBAY REVENUE JURISDICTION ACT (BOM. X OF 1876).

——— **s. 4**—

See SARANJAM . **I. L. R. 41 Bom. 408**

BONA FIDE CLAIM.

See THEFT . . **I. L. R. 44 Calc. 66**

BOND.

——— *Alteration in good faith, consonant to original intention of the parties—Instrument, whether vitiated thereby.* Where a mortgage was in terms one rupee per mensem on a loan of Rs. 200, and the mortgagee inserted

BOND—*concld.*

the words "per cent" in the bond while in his possession, thus altering the interest from eight annas per cent per mensem to one rupee per cent per mensem; and it was found that there had been no fraud; and that it was the common intention of the parties that interest was to be paid at the rate of one rupee per cent: *Held*, that an alteration made in good faith to carry out the original intention of the parties does not vitiate the instrument. ANANDA MOHAN SHAHA *v.* ANANDA CHANDRA NAHA (1916). **I. L. R. 44 Calc. 154**

BREACH OF CONTRACT.

——— **of marriage**—

See DAMAGES . **I. L. R. 41 Bom. 137**

BRITISH BALUCHISTAN REGULATION (IX OF 1896).

——— **s. 10**—

See ESTOPPEL . **L. R. 44 I. A. 213**

BROACH AND KAIRA INCUMBERED ESTATES ACT (BOM. XXI OF 1881).

——— **s. 28**—*Indian Contract Act (IX of 1872), s. 65—Talukdar, mortgage by—Validity of mortgage during Talukdar's lifetime—Mortgage void on Talukdar's death—Mortgagee not entitled to compensation for discharge of mortgage.* A mortgage effected by a talukdar being void beyond the natural life of the mortgagor-talukdar under s. 28 of the Broach and Kaira Incumbered Estates Act (XXI of 1881), the mortgagee is not, in that event, entitled to recover back the money advanced by him on the mortgage under s. 65 of the Indian Contract Act (IX of 1872). *Javerbhai Jorabhai* v. *Gordhan Narsi, I. L. R. 39 Bom. 358*, distinguished. PARSHOTTAM VERIBHAI *v.* CHHATRASANGJI (1917) . **I. L. R. 41 Bom. 546**

BROKER.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 115 . . **I. L. R. 39 All. 81**

BUILDING.

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. ACT III OF 1901), s. 3, CL. (7). **I. L. R. 41 Bom. 563**

——— **addition of bath-rooms in**—

See BOMBAY MUNICIPAL ACT (BOM. III OF 1888), s. 349B. **I. L. R. 41 Bom. 741**

——— **erection of, without sanction**—

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916), ss. 185, 186. **I. L. R. 39 All. 482**

BURDEN OF PROOF.

See CONTRACT . **I. L. R. 39 All. 418**

See HINDU LAW—JOINT FAMILY. **I. L. R. 39 All. 437**

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), ss. 64, 76. **I. L. R. 39 All. 364**

See SUCCESSION ACT (X OF 1865), ss. 7, 9, 10 . **I. L. R. 41 Bom. 687**

BURMESE LAW.

——— *Inheritance—Right of eldest son in a family to a share of the estate on the death of the father—Right of election to take share or not—Limitation Act (IX of 1908), Sch. I, Art. 123—Manu Kyay, Book X, rr. 5 and 14.* By the Burmese Buddhist law of succession laid down in the Manu Kyay, r. 5 of Book X, the eldest son in a family takes on the death of the father a definite one-fourth share of the estate, a right which he is at liberty to assert within any period not outside that fixed by Art. 123, Sch. I of the Limitation Act of 1908, as the period within which a claim must be made for a share of property on the death of an intestate. There is no authority to the effect that the eldest son has merely a right to elect within a certain limited period whether he will take the share of the property or not. MAUNG TUN THA *v.* MA THIT (1916).
I. L. R. 44 Calc. 376

BYE-LAW.

——— **a "law for the time being" —**

See SPECIFIC RELIEF ACT (I OF 1877), S. 45 . . **I. L. R. 40 Mad. 125**

——— **for weights and measures—**

See BOMBAY MUNICIPAL ACT (BOM. III OF 1888), SS. 418, 461, CL. (*o*).
I. L. R. 41 Bom. 580

——— **validity of—**

See THEATRICAL PERFORMANCE.
I. L. R. 44 Calc. 1025

C

CALCUTTA IMPROVEMENT ACT (BENG. V OF 1911).

——— **ss. 39-42, 49, 68-81—**

See LAND ACQUISITION.
I. L. R. 44 Calc. 219

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899).

——— **ss. 3 (*16*), 286, 337—**

See PUBLIC DRAIN.
I. L. R. 44 Calc. 689

——— **ss. 341, 617—**

See COMPENSATION.
I. L. R. 44 Calc. 87

——— **ss. 559 (*52*), 561—**

See THEATRICAL PERFORMANCE.
I. L. R. 44 Calc. 1025

——— **ss. 559, sub.-s. (*52*), 561**—*Bye-laws 83 and 85—Continuing performance at theatre after 1 a.m.—Managers of theatre severally punishable—Joint or several offence.* Where performance at a theatre having been continued beyond the hour of 1 A.M. the three co-sharer owners and managers thereof were convicted for a breach of bye-law 83 made under s. 559, sub-s. (*52*) of the Calcutta Municipal Act and sentenced under bye-law 85, one to pay a fine of Rs. 20 and the two others each to pay a fine of Rs. 10. *Held*, by Chitty, *J.* (agreeing with Chaudhuri, *J.*, Teunon, *J.*, contra).—That the offence in its nature was a single one and the Magistrate was not authorized by law to impose a sentence of fine in excess of Rs. 20 in the aggregate. AMRITA LAL BOSE *v.* CORPORATION OF CALCUTTA (1917) . . . **21 C. W. N. 1009**

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899)—*concld.*

——— **s. 559—*concld.***

CASTE.

See LIBEL . . **I. L. R. 39 All. 561**

CASTE DISABILITIES REMOVAL ACT (XXI OF 1850).

——— *Descendant of Hindu convert to Christianity, whether relieved by the Act.* The Caste Disabilities Removal Act does not apply to descendants of persons relieved by the Act. The descendants of a Hindu convert to Christianity have, therefore, no interests in the property of their unconverted relatives. *Bhagwant Singh* v. *Kallu, I. L. R. 11 All. 100*, dissented from. VAITHILINGA *v.* AYYATHORAI (1917).
I. L. R. 40 Mad. 1118

CAUSE OF ACTION.

See CIVIL PROCEDURE CODE (1908), S. 20 (*c*) . . **I. L. R. 39 All. 607**

CESS.

——— **right of Government to levy, for irrigation purposes—**

See IRRIGATION CESS ACT (MAD. VII OF 1865), S. 1, PROVISOS 1 AND 2.
I. L. R. 40 Mad. 886

CHARITABLE INAMS.

——— *Resumption of, by Government—Patta granted to one of the previous trustees—Suit by representative of another trustee for share—Effect of resumption—Distinction between resumption and enfranchisement of personal or service inams.* Where the Government resumed certain lands which were held previously as charitable inam and 'after imposing an assessment' granted a patta to one of the persons who were the trustees thereof prior to the resumption: *Held*, that the representative of another trustee had no right to claim a share in the land, as against the trustee to whom the patta was given. The principles regulating the ownership of enfranchised lands in cases of enfranchisement of personal or service inams afford no guidance in cases of resumption of charitable inams. In cases of enfranchisement there is a change not of ownership of the land, but of the tenure on which it is held; in cases of resumption the land previously the property of the trust is at the absolute disposal of the Government, who can grant it to anyone, who becomes the owner subject to the obligations ordinarily attached to ryotwari tenure. *Gunnaiyan* v. *Kamakchi Ayyar, I. L. R. 26 Mad. 339*, and *Pingala Lakshmipathi* v. *Bommireddipalli Chalamayya, I. L. R. 30 Mad. 434*, distinguished. PUNNIAH *v.* KOTAMMA (1916) . . **I. L. R. 40 Mad. 939**

CHARITIES.

See CUTCHI MEMONS.
I. L. R. 41 Bom. 181

See MAHOMEDAN LAW—WAKF.
I. L. R. 40 Mad. 116

CHARTER-PARTY.

——————— *Bills of lading—Where charter-party and bills of lading conflict the prevailing contract is the charter-party—Stevedores, though named by the charterers, are the agents of shipowners, and not of the charterers—Dunnage improper and insufficient—Shipowners' ordinary liability for bad stowage and insufficient dunnage—Shipowner's specific liability for shortage and sweepings under the charter-party.* The plaintiffs chartered the defendant company's steamer 'Abydos' for the carriage of cargo of rice in bags from Akyab, a seaport in Burma, to Bombay. The plaintiffs under the charter-party were empowered to sub-let the whole or part of the cargo, and they sub-let about one-fourth of the cargo space to other shippers. The charter-party expressly provided, *inter alia*, that "nothing herein contained shall exempt the shipowners from liability to pay for damage to cargo occasioned by bad stowage, by improper or insufficient dunnage", that "the charterers' stevedores at loading port to be employed at market rate but not exceeding owner's contract rate", that "all mats and requisite dunnage to be provided by the steamer", that "all sweepings to be delivered to the charterers at port of discharge", and that "the steamer to be responsible for any proved shortage". The bills of lading contained a special exception that the ship was "not responsible for loss or damage caused by insufficient packing, torn, mended, or chafed, weak or fragile bags, and bagging wrappers not for usual and reasonable wear and tear of packages". During the voyage the ship experienced heavy weather for at least two days and throughout encountered average monsoon weather with south-westerly squall. On the cargo being unloaded at Bombay it was found that 710 bags of the plaintiffs were damaged, that there was a shortage to the extent of 400 cwts., and that the sweepings collected amounted on the whole to about 576 cwts. On the evidence adduced in the case it was found that the damage was to a certain extent caused by improper laying of the dunnage at the port of loading. The plaintiffs sued in respect of (*i*) damage, (*ii*) shortage, and (*iii*) sweepings. The defendants contended that the loading and stowage of the cargo, as well as the laying of the dunnage was within the discretion and control of the stevedore as the plaintiff's agent, and not as the defendants' agent, and that in respect of shortage their liability was excluded by the bills of lading. *Held*, (*i*) that the shipowners would be *prima facie* liable for the damage caused by bad stowage or improper or insufficient dunnage and that their liability would not be modified by a clause in the charters-party empowering the charterers to name the stevedores, as the stevedores were the agents and paid servants of the shipowners for the purpose of discharging the duty of the shipowners in loading the cargo; *Harris* v. *Best, Ryley & Co., 68 L. T. 76*, followed; (*ii*) that the defendants were liable in respect of the shortage as the prevailing contract between the shipowner and the charterer was the charter-party, and not the bill of lading; (*iii*) the plaintiffs were entitled to claim the value of the sweepings as specific provision was made in that behalf in the charter-party. BOMBAY AND AFRICA STEAM NAVIGATION CO. *v.* HAJI AZUM (1916).

I. L. R. 41 Bom. 119

CHAUKIDARI CHAKARAN LANDS.

——————— *Zamindar's title to such lands when transferred to him by Collector under s. 50 of the Village Chaukidari Act (Beng. Act VI of 1870) after their resumption by Government—Bengal Permanent Settlement, 1793—Bengal Regulations I of 1793 s. 8, cl. (4), and VIII of 1793, ss. 36 to 41—Putnidar's right to such lands under putni grant—Preservation of rights of third parties (by s. 51 of Beng. Act VI of 1870).* The suits which gave rise to this appeal were brought to recover khas possession from the appellant, the registered proprietor of extensive zamindaris in the Birbhum District of Bengal, of chaukidari chakaran lands resumed by Government, and transferred to him under the provisions of the Village Chaukidari Act (Beng. Act VI of 1870). The plaintiff in each suit (respondents) was the putnidar or dar-putnidar of the village within the boundaries of which the land in each suit was situated. It was objected that the appellant had no such interest in the chaukidari chakaran lands as could be conveyed in a putni lease. *Held* (on a consideration of the nature of chaukidari chakaran lands, the provisions of the Bengal Permanent Settlement of 1793, the Regulations of that time so far as they deal with chakaran lands, and the true meaning and effect of Bengal Act VI of 1870), that the zamindar obtained or retained in the chaukidari chakaran lands situate within the territorial boundaries of a village comprised in his zamindari an interest capable of being made the subject of a putni lease. The settlement of 1793 recognizes and proceeds on the footing that the zamindars are the actual proprietors of the land for which they undertake to pay the Government revenue; and it is clear that since the settlement thay have bad a *prima facie* title to all lands for which they pay revenue, such lands being commonly referred to as malguzari lands: see *Perhlad Sein* v. *Doorga Persaud Tewaree, 12 Moo. I. A. 289.* On the Regulations of the Permanent Settlement the leading authority is *Joykissen Mookerjee* v. *Collector of East Burdwan, 10 Moo. I. A. 16*, in which Lord Kingsdown said that the effect of the settlement was to divide chakaran lands into two classes, *viz.*, thanadari chakaran lands, that is, land held on service tenure by police officials and all other chakaran lands. The former class were, by Bengal Regulation I of 1793, s. 8, cl. 4, made resumable by Government, the Government relieving the zamindars from the duty of maintaining a police establishment. These lands were in fact shortly afterwards resumed, and became Government lands, the title of the zamindars being extinguished by such resumption. As to all other chakaran lands, whether held by public officers or private servants in lieu of wages, they are dealt with by Regulation VIII of 1793, s. 41. From ss. 37 to 41 inclusive it appears that, whatever may be the case with regard to the private lands of the zamindars, or with regard to chakaran lands, the services for which were purely personal to the zamindar, it was clear that thanadari and chaukidari chakaran lands, the services for which involved the performance of duties in which the public was interested, had not, as a rule, been taken into account for the purpose of increasing the revenue. The effect of a resumption by the Government of chaukidari chakaran lands under the provisions of Bengal Act VI of 1870 is that after the assessment is complete the Collector is, under s. 50, by order in the scheduled form, to transfer to the zamindar subject to such assessment; and by s. 51 such order operates to transfer the land to the zamindar "subject to all contracts thereby made in respect

CHAUKIDARI CHAKARAN LANDS—*concld.*

of, under, and by virtue of which any person, other than the zamindar, may have any right to any land portion of his estate or tenure in the place in which such land may be situate". Those words are wide enough to include, and in their Lordships' opinion do include, the rights of a putnidar under a putni grant by virtue of which the putnidar is lessee of the zamindars' interest in the lands resumed, and also the rights of a dar-putnidar under a dar-putni grant. Not only, therefore, does the Act recognize the existing title of the zamindar to the lands resumed, but the estate taken by the zamindar under the order of transfer is in confirmation and by way of continuance of his existing estate, and when the zamindar or those through whom he claims has or have entered into contracts affecting his existing estate the rights of third parties under those contracts are preserved. RANJIT SINGH BAHADUR *v.* KALI DASI DEBI (1917). **I. L. R. 44 Calc. 841**

CHEATING.

See EVIDENCE ACT (I OF 1872), SS. 11, 14, 15 . . . **I. L. R. 39 All. 273**

CHILD.

——— **abandonment of—**

See PENAL CODE (ACT XLV OF 1860) S. 317 . . **I. L. R. 41 Bom. 152**

CHRISTIAN MARRIAGE ACT (XV OF 1872),

——— **s. 68**—*Hindu performing marriage in Hindu mode between persons one of whom is a Christian, whether guilty under.* A Hindu by religion performing a marriage according to the Hindu mode between two persons, one of whom is a Christian, commits an offence under s. 68 of the Christian Marriage Act (XV of 1872). *Madras High Court, Appellate Side Proceedings, 21st March 1871, 6 Mad. H. C. R., Appx. XX,* and *Queen-Empress* v. *Yohan, I. L. R. 17 Mad. 391,* approved. Meaning of "solemnize" in s. 4, explained. KOLANDAIVELU, *In re* (1917). **I. L. R. 40 Mad. 1030**

CIVIL AND REVENUE COURTS.

——— **jurisdiction of—**

See AGRA TENANCY ACT (II OF 1901), SS. 4, 167 . **I. L. R. 39 All. 605**

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), SS. 203 TO 207. **I. L. R. 39 All. 711**

CIVIL COURT.

See HEREDITARY OFFICES ACT (BOM. III OF 1874 AS AMENDED BY BOM. III OF 1910), SS. 25, 36, 63, 64. **I. L. R. 41 Bom. 23**

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

——— **s 214—**

See PRE-EMPTION. **I. L. R. 44 Calc. 675**

——— **ss. 240, 276, 295—**

See ATTACHMENT . **I. L. R. 44 Calc. 662**

——— **s. 248—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 183 . **I. L. R. 40 Mad. 1127**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*concld.*

——— **ss. 278, 282, 283, 287**—*Civil Procedure Code (Act V of 1908), O. XXI, rr. 62 and 63—Attachment of mortgaged property—Application to sell the property subject to mortgage lien—Property ordered to be sold free of mortgage—Order not referable to s. 283—Suit on mortgage a year after the date of the order—Limitation Act (IX of 1908) Art. 11.* The property in dispute was attached by the defendant's father under a decree passed by him in a suit of 1882. The plaintiff's father in response to a notice from the Court applied to have the property sold subject to his mortgage lien. In 1883 the Court rejected the application and directed that the property should be sold free from the alleged mortgage claim. Thereupon, in 1910, the plaintiffs sued to recover the amount due on the mortgage. Both the lower Courts held that the order of 1883 was passed under s. 282 of the Civil Procedure Code, 1882, and the same became conclusive under section 283 of the Code and hence the suit was barred under Art. 11 of the Limitation Act, 1908. *Held,* (i) that the suit was not barred as from the terms of the application itself it was clear that it must be referred to s. 287, and not to s. 278 of the Civil Procedure Code, 1882; and (ii) that, apart from the character of the application, the Court's order of 1883 could not properly be referred to s. 283 of the Civil Procedure Code, 1882. With such an order as that s. 282 of the Code had no concern. *Durga Prasad* v. *Mansa Ram, 1 All. L. J. 531,* followed. *Nemagauda* v. *Paresha I. L. R. 22, Bom. 640,* distinguished. GANESH KRISHNA *v.* DAMOO (1916) . . . **I. L. R. 41 Bom. 64**

——— **ss. 313, 315—**

——— **auction sale under—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, r. 93. **I. L. R. 40 Mad. 1009**

——— **s. 317—**

See HINDU LAW—JOINT FAMILY PROPERTY . . . **I. L. R. 44 I. A. 201**

——— **ss. 366, 368, 371—**

See LIMITATION . **I. L. R. 44 I. A. 218**

——— **s. 373—**

See JURISDICTION **I. L. R. 44 Calc. 367**

——— **ss. 462, 464—**

See COMPROMISE **I. L. R. 44 Calc. 829**

V

CIIL PROCEDURE CODE (ACT V OF 1908)

——— **s. 2**—"*Decree*"—*Decree ex parte—Appeal—Dismissal of appeal for default—Application to Court of first instance for rehearing of case—Merger.* An order dismissing an appeal for default does not amount to a decree within the meaning of s. 2 of the Code of Civil Procedure and, consequently, the decree of the lower Court does not merge in the decree of the Appellate Court. Where a decree is passed *ex parte,* and an appeal against the decree is dismissed for default, it is still open to the judgment-debtor to apply to the Court which passed the decree to set it aside. *Gajrajmati Tiwarin* v. *Swami Nath Rai, I. L. R. 39 All. 13,* and *Abdul Majid* v. *Jawahir Lal, I. L. R. 36 All. 350,* referred to. RIFAQAT HUSAIN *v.* BIBI TAWAIF (1917) . **I. L. R. 39 All. 393**

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 2 (2), O. XXI, r. 22—**

See DECREE . **I. L. R. 44 Calc. 954**

——— **s. 11—**

1. ——— *Res Judicata—Provincial Insolvency Act (III of 1907), ss. 22 and 46—Insolvency Court—Application for recovery of property attached by Court—Subsequent suit for same purpose.* A person claiming as his own property attached by the Judge of an Insolvency Court as property of an insolvent may apply to the Insolvency Court under s. 22 of the Provincial Insolvency Act, 1907, for a declaration of his title and for possession of the property claimed, or he may sue to recover the same in the ordinary way. But where such person has elected to pursue his remedy under s. 23 of the Provincial Insolvency Act, and the claim has, after a full inquiry, been decided against him, and he has not appealed from the decision under s. 46, he cannot afterwards file a separate suit with the same object. *Ram Kirpal* v. *Rup Kuari, I. L. R. 6 All., Ex parte Swinbank, 11 Ch. D. 525,* and *Ex parte Butters, 14 Ch. D. 265.* PITA RAM *v.* JUJHAR SINGH (1917) . **I. L. R. 39 All. 626**

2. ——— *Res judicata—Specific Relief Act (I of 1877), s. 9—Suit for possession in Munsif's Court—Subsequent suit for damages in Court of Small Causes.* The plaintiffs filed a suit under s. 9 of the Specific Relief Act, 1877, in the Court of a Munsif, and obtained a decree on the finding that they had in fact been wrongfully dispossessed by the defendants. They then sued in a Court of of Small Causes for damages on account of the same wrongful dispossession. *Held,* that the finding of the Munsif that the plaintiffs had in fact been dispossessed was a *res judicata* in respect of the subsequent suit in the Court of Small Causes. *Chulappa bin Balappa* v. *Raghavendra Swamirao, I. L. R. 28 Bom. 338,* and *Raja Simhadri Appa Rao* v. *Ramchandrudu, I. L. R. 27 Mad. 63,* followed. BODLU BHONJA *v.* MOHAN SINGH (1917).
I. L. R. 39 All. 717

——— **s. 13** (*b*)—*Foreign judgment, suit on—Judgment obtained by plaintiff after defence had been struck out and "defendant placed in the same position as if he had not defended"—Judgment not on "the merits of the case".* The plaintiff (appellant) sued the defendant (respondent) in the Court of King's Bench in London for a sum of money he alleged to be due to him in respect of transactions he had with the defendant as a member of a firm in Madras who under arrangements between them consigned goods to the plaintiff for sale in London. The defendant denied that he was ever a member of the firm in Madras, and also denied that there was any money due by him to the plaintiff or that the arrangements had been made under which the plaintiff asserted that his claim arose. The defendant refused to answer interrogatories which the plaintiff was allowed to exhibit calling on the defendant to speak as to some of the material matters in dispute, and the defence was thereupon ordered to be struck out, "and the defendant to be placed in the same position as if he had not defended", and judgment was entered for the plaintiff. In a suit brought in the High Court at Madras on that judgment: *Held* (upholding the decision of the appellate High Court), that it had not been given between the parties "on the merits of the case" within the meaning of s. 13 (*b*) of the Code of Civil Procedure, 1908. KEYMER *v.* VISVANATHAM REDDI (1916) . **I. L. R. 40 Mad. 112**

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 13**—*concld.*

——— **s. 20—**

1. ——— *Sale of goods by sample—Vendor and purchaser living in different places—Suit by purchaser for damages for breach of warranty—In which place suit maintainable.* A person residing at Allahabad purchased goods by sample from a firm carrying on business at Bombay. The goods were sent to Allahabad, but on arrival they were discovered to be not according to sample, and the purchaser accordingly instituted a suit for damages against the vendors in the Small Cause Court at Allahabad. The Small Cause Court returned the plaint for presentation in Bombay. *Held,* that the test which the Court ought to have applied to the question was whether delivery of the goods at Allahabad was an essential part of the contract between the parties. SHEO CHARAN LAL *v.* TAJ BHAI ALI BHAI AND SONS (1917).
I. L. R. 39 All. 368

2. ——— *Cause of action—Jurisdiction—Suit to set aside a decree on the ground of fraud—Decree obtained in Bengal—Suit filed in Agra.* It is competent to a Court in the United Provinces to grant a declaration that a decree passed by a Court in another province is fraudulent and null and void as against the plaintiff, and to grant a perpetual injunction restraining the decree-holder from executing it, provided that some part of the plaintiff's cause of action has arisen within the jurisdiction of the Court in which the suit is brought. *Banke Behari Lal* v. *Pokhe Ram, I. L. R. 25 All. 48,* and *Jawahir* v. *Neki Ram, I. L. R. 37 All. 189,* followed. *Umrao Singh* v. *Hardeo, I. L. R. 29 All., 418,* and *Dau Dayal* v. *Munna Lal, I. L. R. 36 All. 564,* distinguished. KHUSHALI RAM *v.* GOKUL CHAND (1917).
I. L. R. 39 All. 607

——— **s. 24** (*4*)—*Suit instituted in Court of Subordinate Judge invested with Small Cause Court powers—Transfer of suit by order of District Judge to Munsif's court—Jurisdiction of Munsif—Appeal—Provincial Small Cause Courts Act (IX of 1887), ss. 32 to 35.* The expression "a Court of Small Causes" in s. 24 (*4*) of the Code of Civil Procedure includes Courts invested with Small Cause Court jurisdiction as well as Courts constituted under Act No. IX of 1887. Where, therefore, a suit of a Small Cause Court nature, instituted in the Court of a Subordinate Judge invested with the powers of a Judge of Small Cause Court, was transferred by the District Judge to the Court of a Munsif not possessing the powers of a Small Cause Court, and was tried by him and a decree passed therein, it was *held* that no appeal lay from the Munsif's decree. *Mangal Sen* v. *Rup Chand, I. L. R. 13 All. 324,* and *Sankararama Aiyar* v. *Padmanabha Aiyar, 23 Mad. L. J. 373,* followed *Ramchandra* v. *Ganesh, I. L. R. 23 Bom. 382,* and the reasoning of *Dulal Chandra Deb* v. *Ram Narain Deb, I. L. R. 31 Calc. 1057,* dissented from. SUKHA *v.* RAGHUNATH DAS (1916) . **I. L. R. 39 All. 214**

——— **s. 45—**

See EXECUTION . **I. L. R. 40 Mad. 1069**

——— **s. 47, O. XXI, rr. 100, 101—**

Exonerated defendant, whether a party to the suit—

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 47**—*concld.*

Suit for redemption—Person claiming adversely to both the mortgagor and the mortgagee—Misjoinder of causes of action and parties—Party exonerated—Delivery of possession in execution—Objection to delivery of property by exonerated defendant—Proceedings whether under s. 47 or O. XXI, r. 100 of the Code. When a party to a mortgage suit, who sets up a title adverse to both the mortgagor and mortgagee, has been exonerated from the suit on the ground of misjoinder and his claim has not been adjudicated upon in the suit: *Held*, that he does not remain a party to the suit for the purposes of s. 47 of the Civil Procedure Code and his claim petition in respect of properties delivered in execution of the decree to the decree-holder falls under O. XXI, r. 100 of the Code. *Ramaswami Sastrulu* v. *Kameswaramma, I. L. R. 23 Mad. 361*, and *Sivasamba Iyer* v. *Kuppun Samban, 29 Mad. L. J. 629*, distinguished. *Gadicherla Chinna Seetayya* v. *Gadicherla Seetayya, I. L. R. 21 Mad. 45*, and *Venkatapati Naidu* v. *Subraya Mudali, 17 Mad. L. J. 416*, referred to. *Jaggeswara Dutt* v. *Bhuban Mohan Mitra, I. L. R. 33 Calc. 425*, and *Musammat Radha Kunwar* v. *Thakur Reoti Singh ,20 C. W. N. 1279*, followed. KRISHNAPPA *v.* PERIYASWAMY (1916).

I. L. R. 40 Mad. 964

——— **ss. 47 and 52**—*Execution of decree—Parties impleaded as representatives of a deceased debtor—Sale in execution—Objection by representatives to sale—Procedure.* Persons who are impleaded in a suit as representatives and assetholders of a deceased party are in the same position as regards s. 47 of the Code of Civil Procedure, 1908, as persons who are parties in their own right. An objection, therefore, raised by such persons to the sale of property in execution of the decree must be taken under the above-mentioned section, and not by way of a separate suit. *Seth Chand Mal* v. *Durga Dei, I. L. R. 12 All. 313*, *Basti Ram* v. *Fattu, I. L. R. 8 All. 146*, and *Punchanun Bundopadhya* v. *Rabia Bibi, I. L. R. 17 Calc. 711*, referred to. DULLA *v.* SHIB LAL (1916).

I. L. R. 39 All. 47

——— **s. 48**—*Mortgage-decree, for sale and for recovery of balance, if any, from the mortgagor—Sale and ascertainment of insufficiency—Execution for balance—Twelve years computable, from what date. Held*, by the Full Bench (PHILLIPS, *J.*, dissenting). —Where a mortgage-decree provides for recovery of any balance from the other properties of the mortgagor in case the sale-proceeds of the mortgaged properties are found insufficient to satisfy the entire decree amount the decree-holder has, under s. 48, Civil Procedure Code, twelve years for the recovery of such balance reckoned from the time when it is ascertained to be due. *Ratnachalam Ayyar* v. *Venkatarama Ayyar, I. L. R. 29 Mad. 46*, and *Narhar Raghunath* v. *Krishnaji Govind, I. L. R. 36 Bom. 368*, followed. *Venkata Perumal* v. *Prayag Dassji, 29 I. C. 556*, overruled. *Per* ABDUR RAHIM, OFFG. *C. J.*, and SESHAGIRI AYYAR, *J.*—"The date of the decree" in clause (*a*) of s. 48, Civil Provcedure Code, means the date the decree becomes executable. *Per* PHILLIPS, *J.*—Under s. 48, Civil Procedure Code, the period of twelve years for the recovery of the balance is to be computed from the date the decree actually bears. AIYASAMIER *v.* VENKATACHELA MUDALI (1916) . . **I. L. R. 40 Mad. 989**

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 59**—*Document not produced with plaint and treated in trial Court as piece of evidence, it should be treated in appeal as document creating rights—Disadvantage to defendant from such procedure. Held*, that the High Court should not have treated a Razi petition which the plaintiff did not produce in Court when he presented his plaint or which or a copy whereof he did not deliver to be filed with the plaint as required by s. 59 of the Civil Procedure Code as creating rights and when the trial Court did not treat it otherwise than as a piece of evidence; for had it been put forward by the plaintiff as creating rights, then apart from any difficulty as to its admissibility in the absence of registration (a point on which their Lordships expressed no opinion), a line of defence requiring evidence might have been adopted which was unnecessary so long as it was used merely as a piece of evidence. SULAIMAN *v.* BIYATHTHUMMA (1916).

21 C. W. N. 553

——— **s. 60**—*Execution of decree—Attachment—Pay of officer in the Indian Army. Held*, that the pay of an officer of the Indian Army may be attached in execution of a decree against him to the extent of one-half. *Lecky* v. *The Bank of Upper India, Limited, I. L. R. 33 All. 529*, distinguished. *Prins* v. *Murray & Co. 23 Indian Cases 935*, followed. HAY *v.* RAM CHANDAR (1917).

I. L. R. 39 All. 308

——— **s. 60** (*1*)—*Right to future maintenance, including allowances, not a debt under—Non-liability to attachment under s. 60 (n), Civil Procedure Code—No right to appoint receiver to collect it, under O. XL, r. 1, Civil Procedure Code.* A mere right to receive maintenance in the future, at certain rate fixed by an agreement, is not a *debt* within the meaning of s. 60 (*1*), Civil Procedure Code; it cannot be attached in execution of a decree, such a step being prohibited by s. 60 (*n*), Civil Procedure Code, and as there can be no attachment no receiver can be appointed under O. XL, r. 1, Civil Procedure Code, to collect the future allowances as and when they fall due for satisfying the decree. *Nanammal* v. *The Collector of Trichinopoly, 20 Mad. L. J. 97*, and *Tara Sundari Debi* v. *Saroda Charan Banerjee, 12 C. L. J. 146*, followed. *Ranee Annapurni Nachiar* v. *Swaminatha Chettiar, I. L. R. 34 Mad. 7*, considered. PALIKANDY MAMMAD *v.* KRISHNAN NAIR (1916) . . . **I. L. R. 40 Mad. 302**

——— **s. 60** (*c*)—*Decree—Execution—Attachment—'Agriculturist', meaning of.* A judgment-debtor put in an application before a Subordinate Judge claiming that his house attached in execution should not be sold by reason of the provisions of s. 60 (*c*) of the Civil Procedure Code, 1908, as he was an agriculturist. The lower Courts dismissed the application on the ground that the judgment-debtor had ceased to be an agriculturist in the ordinary sense of the term and had become a mere agricultural labourer. On appeal to the High Court: *Held*, that the judgment-debtor should be protected from the attachment of the house as the term 'agriculturist' as used in s. 60 of the Civil Procedure Code should be held to include persons engaged in cultivating the soil for remuneration athough they may have no proprietary interest in the soil. DEVARE HEGDE *v.* VAIKUNT SUBAYA (1917) . . **I. L. R. 41 Bom. 475**

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— s. 64, O. XXXVIII, r. 10—*Attachment before judgment, scope and effect of section, if limited only to transaction subsequent to attachment—Contract to sell entered into before attachment but specifically performed thereafter and before execution sale—Purchaser at execution sale and purchaser under contract to sell, respective rights of.* The plaintiffs attached the disputed property before judgment and purchased it at an execution sale. Before the attachment by the plaintiffs the debtor had executed an agreement of sale in respect of the same property in favour of the defendant which was followed by a suit for specific performance. In pursuance of the decree in this suit the Court, before the date of the execution sale, executed a *kobala* conveying the property to the defendant who also obtained possession before the said sale. Before the plaintiff purchased at the execution sale he had notice of the agreement under which the defendant's purchase was made. *Held*, that the provision in s. 64 of the Civil Procedure Code is for the protection of a creditor only against transactions subsequent to the attachment and the defendant's purchase must prevail. There is no reason to hold that the provision in O. XXXVIII, r. 10, is limited to rights *in rem*. That the defendant had a right to have the contract to sell specifically performed and under s. 489 of Act XIV of 1882, corresponding to O. XXXVIII, r. 10 of the present Code, that right was not affected by the attachment. MADAN MOHAN DE *v.* REBATI MOHAN PODDAR (1915) . . . **21 C. W. N. 158**

——— s. 73—

See LIMITATION ACT (IX OF 1908), SCH. 1, ARTS. 29, 36, 120.
I. L. R. 39 All. 322

——— *Rateable distribution, application for—Decree, validity of, if can be impeached—Inquiry, judicial or administrative—Objection to decree as collusive, if can be raised—Power of Court—Conditions under s. 73.* An inquiry under s. 73 of the Civil Procedure Code is of a non-judicial character and a Court charged with the distribution of assets under that section has no power to inquire into the validity or the *bona fides* of a decree on the strength of which rateable distribution is claimed. *Shankar Sarup* v. *Mejo Mal*, *I. L. R. 23 All. 313*, referred to. The only conditions to be satisfied under s. 73 are that there must have been an application *before* the assets are realized and that the decree should not have been satisfied. SARAVANA PILLAI *v.* ARUNACHALAM CHETTIAR (1916) . . **I. L. R. 40 Mad. 841**

——— s. 73, O. XXI, r. 52—

See EXECUTION OF DECREE.
I. L. R. 44 Calc. 1072

——— s. 73, O. XXI, r. 65—

See RATEABLE DISTRIBUTION.
I. L. R. 44 Calc. 789

——— s. 83—*Suit for judicial separation—Right of an alien enemy to sue in British Court.* In this case the Court granted an application for an order directing the summons, together with a copy of the petition filed by the petitioner for a judicial separation, to be sent to the Probate, Divorce, and Admiralty Division of the High Court in England for transmission to the Foreign Office for service on the respondent, the petitioner being the wife of a

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— s. 83—*concld.*

German living in Germany, but herself residing in British India, apparently with the permission of the Government of India. REIFFSTECK *v.* REIFFSTECK (1917) . . . **I. L. R. 39 All. 377**

——— s. 91—*Vesting of highway in public authority, if precludes private individuals suing with leave in respect of public nuisance on street—Dedication, acceptance of, how established—User as evidence of dedication—Calcutta Municipal Act (Beng. III of 1899), s. 336.* S. 336 of the Calcutta Municipal Act by vesting public streets, including the soil, in the Calcutta Municipal Corporation does not take away the right of members of the public to sue under s. 91 of the Civil Procedure Code in respect of a nuisance committed on the street. Where a highway is dedicated to the public acceptance by the public requires no formal act of adoption by any persons or authority but is to be inferred from public user of the way. SERAJMAL KHORAD *v.* ABHOY KUMAR ROY CHOWDHURY (1917) . . . . **21 C. W. N. 595**

——— s. 92—

1. ——— *Applicability of, to the suit—Religious Endowment—Temple subject to superintendence of Temple Committee—Offerings by worshipper, ownership of—Permanent alienation of offerings by Committee, validity of—Suit to set aside—Limitation—Cause of action—Civil Procedure Code (Act V of 1908), O. I, r. 8—Suit by two worshippers on behalf of themselves and others under, maintainability of—Religious Endowments Act (XX of 1863), s. 18, or Civil Procedure Code (Act V of 1908), s. 92, sanction under, necessity of—Suits in which reliefs asked for against strangers to trust, no necessity for sanction for—"Vesting any property in trustees"—S. 92, clause (h), meaning of—Scope of—Respective rights and duties of trustees and Temple Committees.* Two of the worshippers of a temple near Karur, purporting to sue on behalf of themselves and others, with the leave of the Court obtained under O. I, r. 8 of the Code of Civil Procedure, instituted a suit against the members of the Devasthanam Committee of Karur, to whose superintendence the temple was subject, and the *archakas* and *stanikas* of the temple for a decree (i) declaring the invalidity as against the temple of a perpetual lease granted by the Committee to the *archakas* and *stanikas* of the right to collect offerings made by the pilgrims; and (ii) directing that only the trustee or the manager duly appointed should retain the right of collecting the said offerings. The plaint alleged that the alienation in question was highly detrimental to the interests of the temple and was beyond the power of the Committee. The trustee of the temple was not impleaded in the suit and no sanction, as provided by s. 92 of the Civil Procedure Code (Act V of 1908), or s. 18 of the Religious Endowments Act (XX of 1863), was obtained for instituting the suit. *Held*, by the Full Bench :—(i) that s. 92 of the Civil Procedure Code (Act V of 1908) is not applicable to suits whose object is to establish the right of the temple to property in the hands of strangers or alienees from the temple authorities; and (ii) that the suit was, therefore, maintainable without such sanction. *Obiter*: The alienation in question is void. *Per* ABDUR RAHIM, OFFG. *C.J.* The reliefs prayed for in the suit are not of the kind mentioned in s. 92, Civil Procedure Code. The phrase "vesting any property in

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 92**—*concld.*

trustees " in s. 92 contemplates cases where new trustees have been appointed or other cases of a similar nature, such as those mentioned in ss. 26 to 35 of the Trustee Act of 1893 (56 & 57 Vict., cap. 53) of England. Clause (*h*) of section 92 must be read along with the specified reliefs and the reliefs that can be granted under it should not be of a character different from those expressly mentioned. *Per* COUTTS TROTTER and SESHAGIRI AYYAR, *JJ.* (in the Division Bench). The alienation in question relating not only to existing, but to future, income, the cause of action to question such an alienation accrued every time the offering was wrongfully received. *Per* SESHAGIRI AYYAR, *J.* (in the Division Bench). Respective rights and duties of trustees and temple committees discussed. VENKATARAMANA AYYANGAR *v.* KASTURIRANGA AYYANGAR (1916).

I. L. R. 40 Mad. 212

2. ——— *Suit under, nature of—Death of plaintiffs—Power of Court to add parties.* A suit brought under s. 92 of the Code of Civil Procedure is a representative suit and the Court has power, under O. I, r. 10, clause (2) of the Code, to add persons as additional parties whose presence may be necessary in order to enable the Court effectually and completely to adjudicate upon the questions involved in the suit. *Varadayya Chetty v. Munusami Chetty, 10 Mad. L. T. 514,* followed. *Chhabile Ram v. Durga Prasad, I. L. R. 37 All. 296,* dissented from. PARAMESWARAN MUNPEE *v.* NARAYANAN NAMBODRI (1916).

I. L. R. 40 Mad. 110

——— **s. 102**—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 8.

I. L. R. 41 Bom. 367

——— **s. 104, O. XLIII, r. 1; O. XXI, r. 90** —*Letters Patent, s. 10—Appeal from an order of a single Judge dismissing an appeal from an order refusing to set aside a sale. Held,* that no appeal will lie under s. 10 of the Letters Patent from an order of a single Judge of the High Court dismissing an appeal from an order of an execution Court under O. XXI, r. 90 of the Civil Procedure Code, refusing to set aside a sale. *Naim-ullah Khan v. Ishan-ullah Khan, I. L. R. 14 All. 226,* followed. PIARI LAL *v.* MADAN LAL (1916).

I. L. R. 39 All. 191

——— **ss. 107, 151; O. XLI, r. 23**—

See REMAND . **I. L. R. 44 Calc. 929**

——— **s. 110**—

See APPEAL TO PRIVY COUNCIL.

I. L. R. 44 Calc. 119

——— **s. 114; O. XLVII, r. 1**—

See REVIEW . **I. L. R. 44 Calc. 1011**

——— **s. 115**—

See APPEAL, RIGHT OF.

I. L. R. 44 Calc. 804

See CRIMINAL PROCEDURE CODE, s. 476.

I. L. R. 39 All. 367

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863), s. 10.

I. L. R. 40 Mad. 793

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 115**—*concld.*

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 816

1. ——— *Agra Tenancy Act (II of 1901)—Suit relating to an agricultural holding—Order adjourning suit indefinitely—Revision—Powers of High Court—Statutes 5 and 6 Geo. V, Cap. LXI, s. 107.* Plaintiff brought a suit in a Civil Court alleging that the defendants' father had been a lessee of certain property for 7 years, that after the expiry of the lease he became manager of the property and, after his death, the defendant also became manager. He pleaded that the defendant had been dismissed from his position as manager and asked for possession of the property, which comprised shares in 26 villages, a market, and some collection houses. The defendant pleaded that he was a "thekadar" within the meaning of the Tenancy Act, and filed an application praying the Court to exercise its jurisdiction under s. 202 of that Act. The Court acceded to this prayer and adjourned the suit to an indefinite period till the question was decided by the Revenue Court. The plaintiff applied in revision against the order. *Held* (*Per* PIGGOTT, *J.*), that the revision was incompetent as it was directed against an interlocutory order and a remedy by way of appeal was open to the plaintiff wherein all matters could be decided; (*Per* WALSH, *J.*) that a revision lay to the High Court. DHANDEI KUNWAR v. CHOTU LAL (1916).

I. L. R. 39 All. 254

2. ——— *Small Cause Court suit tried as a regular suit—Jurisdiction—Appeal—Revision.* Where a Small Cause suit is tried by a Munsif on the original side, and his decision is reversed on appeal, the High Court is bound to set aside the appellate decree as being passed without jurisdiction. *Kollipara Seetapathy v. Kankipati Subbayya, I. L. R. 33 Mad. 323,* followed. ABDUL MAJID *v.* BEDYADHAR SARAN DAS (1916).

I. L. R. 39 All. 101

3. ——— *Valuation of suit—Suit intentionally undervalued—Powers of Court as regards amendment of valuation—Court-fee.* When a Court is of opinion that a suit has been insufficiently valued, and that the plaintiff has done so intentionally, it may require the plaintiff to make a fresh valuation and pay the proper Court-fee, but it has no power to amend the valuation itself. ASHIQ ALI *v.* IMTIAZ BEGAM (1917).

I. L. R. 39 All. 723

——— **s. 115; O. XXIII, r. 1**—

See JURISDICTION OF HIGH COURT.

I. L. R. 44 Calc. 454

——— **s. 122**—

See POWER-OF-ATTORNEY.

I. L. R. 41 Bom. 40

——— **s. 144**—

1. ——— *Decree—Execution—Application for restitution, whether an application for execution—Minority of the applicant—Indian Limitation Act (IX of 1908), s. 6, Sch. I, Arts. 182, 183.* On November 4th, 1901, a decree was passed by the trial Court for delivery of certain lands in favour of the plaintiff. In execution of that decree the lands were delivered to the plaintiff.

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 144**—*contd.*

On an appeal preferred by the defendant, who was then a minor, the High Court amended the decree on August 17th, 1903, by excepting from the decree for delivery two survey numbers. The defendant attained majority in October, 1912, and on August 4th, 1914, he made an application under s. 144 of the Civil Procedure Code, 1908, for delivery to him of the two survey numbers. It was contended that the minority of the defendant would not save limitation under s. 6 of the Indian Limitation Act, 1908, unless the application be treated as one for execution of the decree within the meaning of that section. *Held*, that the application was not barred as it was virtually an application for execution of the High Court decree amending the decree of the trial Court. KURGODIGOUDA *v.* NINGANGOUDA (1917) . **I. L. R. 41 Bom. 625**

2. ——— *Decree, transfer of, recognized in execution—Declared invalid in subsequent suit to set aside transfer—Restitution of amount paid under first decree.* S. 144 is not confined to cases where restitution is claimed on the reversal of a decree in first or second appeal. Provided the decree is varied or reversed, the section applies however the reversal or variance has been effected. *Shama Purshad Roy Chowdery* v. *Hurro Purshad Roy Chowdery, 10 Moo. I. A. 203, at pages 211 and 212*, referred to. An order in execution-proceedings, recognizing the transfer of a decree and allowing execution to proceed which determined a question arising between the judgment-debtor and the representative of the decree-holder, is a *decree* as defined in the Code of 1882; and when that order was superseded by a *decree* in a subsequent suit declaring the invalidity of the transfer, and restraining the latter from receiving the decree-amount, the judgment-debtor is entitled, under s. 144, Civil Procedure Code (1908), to recover from the transferor the amount paid, with interest. SUBBARAYUDU *v.* YERRAM SETTI SESHASANI (1916) . . **I. L. R. 40 Mad. 299**

——— **ss. 144 and 11, expl. IV, and 47, O. II, r. 2**—*Restitution, applications for—Execution applications—Successive applications—Res judicata—Rule of constructive res judicata, applicability of—Previous applications for principal—Subsequent application or interest, whether barred.* Where a judgment-debtor who had applied for and obtained restitution of a sum of money recovered from him in execution of a decree which was subsequently reversed on appeal, filed a subsequent application for recovery of interest on the amount for the period during which the decree-holder had the use of the money: *Held*, that the subsequent application was not barred by the rule of constructive *res judicata* under s. 11, explanation IV, or by O. II, r. 2 of the Civil Procedure Code. Unless the decision of the question subsequently raised was either expressly given, or must be deemed to have been necessarily implied in the previous decision, the principle of *res judicata* should not be applied to execution proceedings. *Lakshminarayana* v. *Pallamaraju, 4 M. L. W. 101*, referred to. *Balasubramania Chetty* v. *Swarnammal, I. L. R. 38 Mad. 199*, followed. An application for restitution is an application in execution under the new Code of Civil Procedure (Act V of 1908) as under the old Code (Act XIV of 1882). *Prag Narain* v. *Kamakhia Singh, I. L. R. 31 All. 551*, referred to. SOMASUNDARAM *v.* CHOKKALINGAM (1916). **I. L. R. 40 Mad. 780**

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 144**—*concld.*

——— **s. 145**—*Execution of decree—Security for performance of decree hypothecating immovable property—Mode of enforcing security.* While a security bond given to a Court under s. 145 of the Code of Civil Procedure can be enforced so far as the personal liability of the surety is concerned by means of executing the original decree against him, if the surety takes upon himself more than a personal liability and hypothecates immovable property, such hypothecation can only be enforced against the property by means of a regular suit. *Janki Kuar* v. *Sarup Rani, I. L. R. 17 All. 99*, not followed. *Mukta Prasad* v. *Mahadeo Prasad, I. L. R. 38 All.* 327, distinguished. AMIR *v.* MAHADEO PRASAD (1916) . **I. L. R. 39 All. 225**

——— **s. 151**—*Costs against persons behind benamidar creditor obtaining adjudication order in insolvency proceeding.* Certain persons were adjudicated insolvents on the application of a lady who professed to be a creditor. The insolvents questioned the right of the lady to claim as a creditor in the insolvency before the Official Assignee who held that the lady was not a creditor but a *benamidar* for certain other persons. Against this decision of the Official Assignee the lady preferred an appeal which was ultimately dismissed by the Court of Appeal. The adjudication order was also cancelled. On the application of those who had been adjudicated insolvents: *Held*, that they are entitled to costs in respect of the proceedings connected with the *benamidar's* claim as a creditor in insolvency against the real persons behind the *benamidar* when it appeared that the person put forward was of no means, and was put forward by them with a view to abusing the process of the Court. KETOKY CHARAN BANERJI *v.* SARAT KUMARI DEBI (1917). **21 C. W. N. 826**

——— **s. 151; O. IX, r. 13**—*Procedure—Minor—Decree against minor set aside on ground of want of proper appointment of guardian ad litem—Remedies open to plaintiff.* Under the Code of Civil Procedure a suit may be instituted against a minor by name. It is the duty of the Court to appoint a proper guardian *ad litem*. The institution of the suit is complete and saves limitation, but its further progress depends upon the appointment of a suitable guardian *ad litem*. Where proceedings taken to appoint a guardian *ad litem* for a minor in a suit have been declared to be invalid, and a decree passed against a minor has been set aside because the minor was not properly represented in the suit, the Court whose duty it ultimately is to appoint a guardian has inherent power, under s. 151 of the Code of Civil Procedure, to revive the suit under O. IX, r. 13 of the Code. *Raj Kumar Roy* v. *Hara Krishna Chakravarti, 10 Indian Cases, 355*. BHAGWAN DAYAL *v.* PARAM SUKH DAS (1916) . . . . **I. L. R. 39 All. 8**

——— **s. 152; O. XLVII, r. 1**—

See PRACTICE . **I. L. R. 44 Calc. 28**

——— **O. I, rr. 1, 3**—*Apply to questions of joinder of parties, as well as causes of action.* Questions of joinder of parties and causes of action are

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

O I, rr. 1, 3—*concld.*

governed by the same principle whether the claim is founded on breach of contract or on tort. RAMENDRO NATH RAY *v.* BROJENDRO NATH DAS (1917) . . . . . **21 C. W. N. 794**

O. I, r. 3—*Misjoinder—Agreement to sell his share by one member of a joint Hindu family —Suit by vendee for specific performance, partition and possession against vendor and the vendor's coparceners—Specific Relief Act (I of 1877), s. 27 (b) and (c).* Where a plaintiff sued a member of a joint Hindu family for specific performance of a contract to sell his share, and included in the same suit a claim for partition and possession against all the members of the family, based on an allegation that a subsequent partition made between all the members of the family by which the items contracted to be sold to the plaintiff were allotted to the other members, was made with a view to defraud the plaintiff of his rights under the contract. *Held* by the Full Bench (ABDUR RAHIM, *J., contra.*)—(i) that the claim for partition was wrongly joined with the claim for specific performance, as at the date of suit the plaintiff had no right to sue for partition not having completed his title by a sale-deed; and (ii) that by reason of the subsequent partition the other members of the joint family were properly made parties to the suit for specific performance as subsequent transferees with notice. *Tasker* v. *Small, 3 My. & Cr. 63,* applied. *Per* ABDUR RAHIM, *J.*—The suit as framed for specific performance, as well as for partition and possession, against all the members of the family is maintainable under O. I, r. 3, Civil Procedure Code, and s. 27 (*c*) of the Specific Relief Act. A right to ask both for specific performance, as well as for partition and possession, arises at the time the vendor refuses to carry out the bargain and give possession of the property. The right to possession *arises out of* the contract to sell within the meaning of O. I, r. 3, Civil Procedure Code. RANGAYYA REDDY *v.* SUBRAMANIA AYYAR (1917) . . . . **I. L. R. 40 Mad. 365**

O. I, r. 8—

See MOSQUE PROPERTY, SUIT FOR.
I. L. R. 44 Calc. 258

See RELIGIOUS ENDOWMENT.
I. L. R. 40 Mad. 212

O. I, r. 9—*Parties, non-joinder, dismissal of suit for, if proper—Amendment—O. II, r. 5, joining claims against executors personally and as executors—O. I, r. 1—Joinder of claim in the alternative as* shebait *and as owner—Inconsistent positions.* Plaintiff alleged that one J was in possession of shares of coparcenary properties belonging to himself and others, including one N, from whose widow (it was averred) J had improperly obtained an *ekrar* under which he retained possession of N's share till his death. After his death defendants Nos. 2 to 6 (who, it transpired, were executors to the will of J) remained in possession of that share. After J's death N's widow adopted plaintiff as N's son, and plaintiff brought this suit to recover possession of N's share, with mesne profits as from the date of adoption, making defendant No. 1, who was heir and residuary legatee of J, and defendants Nos. 2 to 6 in their personal capacity, defendants, the allegation being that these defendants were keeping the plaintiff out of possession. The plaintiff stated that, so far as he had come to know on inquiry, the properties in suit were *debutter* properties and that he and others of the family had *shebaiti* interest therein, but that, in case the properties were found not to be *debutter*, he might be allowed to recover as owner. The defendants, *inter alia*, objected that defendants Nos. 2 to 6 having been in possession as executors the suit could not proceed against them in their personal capacity, and that the plaintiff could not maintain the suit as a *shebait* and at the same time in his own right as owner. The first Court dismissed the suit on the first of these grounds, and was also of opinion that the suit was not maintainable by plaintiff alternatively as *shebait* and owner, his interest as *shebait* being in conflict with his interest as owner. *Held,* that though, under O. I, r. 9, the Court could not dismiss the suit on the ground that defendants Nos. 2 to 6 were not sued as executors, in order effectually and completely to adjudicate all the questions involved in the case, defendants Nos. 2 to 6 should be sued personally, as well as executors, and defendant No. 1 (who was found not to be in possession) should be sued as residuary legatee and heir of J and the plaint should be amended accordingly. That O. II, r. 5, was no bar to the amendment as defendants Nos. 2 to 6 claimed to be in possession of the properties as part of J's estate and prevented the plaintiff from taking possession professedly in their character as executors. The word "estate" as used in O. II, r. 5, means both the "estate" rightly and properly held as executors and the "estate" in its physical sense. That the claim of the plaintiff in the alternative as *shebait* and as owner was not open to objection, having arisen out of the same transaction and there being really no conflict, the plaintiff claiming as owner only in the event of the properties being found to be not *debutter*. NIRPENDRO NATH RAY *v.* BIRENDRO NATH RAY (1917) . . . **21 C. W. N. 939**

O. I, r. 10—*Plaintiff described as a minor, really a major—Bona fide mistake of next friend—Dismissal of suit, if proper—Procedure to be adopted.* Where a plaintiff was described in the plaint as a minor but had really attained majority some four days before the plaint was filed by his next friend who was under a *bona fide* belief that he was still a minor when she filed the suit on his behalf as his next friend: *Held,* that the suit ought not to be dismissed but that the proper procedure to be adopted in the case was to return the plaint for presentation after making the necessary amendments by striking off the description of the plaintiff as a minor suing through his next friend and making other consequential alterations in the plaint. *Taqui Jan* v. *Obaidulla, I. L. R. 21 Calc. 866,* followed. *Sheorania* v. *Bharat Singh, I. L. R. 20 All. 90,* referred to. SHANMUGA CHETTY *v.* NARAYANA AYYAR (1916).
I. L. R. 40 Mad. 743

O. II, r. 2—

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 62 AND 120.
I. L. R. 40 Mad. 291

O. II, r. 2; O. XXXIV, rr. 2 and 4—*Mortgage—Suit for sale—Construction of document—Possibility of separate suits for interest and*

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. II, r. 2**—*concld.*

principal. A mortgage bond executed on the 14th of September, 1910, provided that the mortgage debt should be repayable after the expiry of three years. It also provided that, if interest remained unpaid for more than a specified time, the mortgagee might, without waiting for the expiry of the term of the mortgage, sue for either the unpaid interest or the whole amount of principal and interest then due. It further provided that, if the mortgage debt was not paid at due date, the whole amount, principal and interest, might be rocovered by suit. After the expiry of the term of the bond, the mortgagee sued to recover arrears of interest only and obtained a decree, the defendant not entering an appearance. In that suit the plaintiff did not allege that he had a right to sue for the principal separately at a subsequent date. *Held*, on a construction of the bond in suit, and with reference to the former pleadings, that the subsequent suit was barred by O. II, r. 2 of the Code of Civil Procedure. *Read* v. *Brown, 22 Q. B. D. 128*, and *Murti* v. *Bhola Ram, I. L. R. 16 All. 165*, referred to. *Yashvant Narayan Kamat* v. *Vithal Divakar Parulekar, I. L. R. 21 Bom. 267*, and *Rambhaj* v. *Devia, Punj. Rec. 1881, p. 296*, distinguished. *Per* PIGGOTT, *J.* RR. 2, 4 of O. XXXIV of the Code of Civil Procedure do not contemplate that there should be more than one suit for sale on a mortgage. Whether or not it might be possible so to draft a mortgage as to evade this statutory obligation this had not been done in the present case. MUHAMMAD ZAKARIYA *v.* MUHAMMAD HAFIZ (1917) . . . . **I. L. R. 39 All. 506**

——— **O. III, r. 2 (a)**—

See POWER-OF-ATTORNEY.

I. L. R. 41 Bom. 40

——— **O. V, r. 3 ; O. IX, r. 12**—*Order for personal attendance of plaintiff—Non-attendance of plaintiff on adjourned date—Dismissal of suit.* An order made by a Court for the personal appearance of a party to a suit on a particular date does not imply that the party to whom it is issued is bound to appear on any subsequent date to which the suit may be adjourned. SUNDAR NATH *v.* MALLU (1917) . . . . **I. L. R. 39 All. 476**

——— **O. VII, r. 11**—

See COURT-FEE . **I. L. R. 44 Calc. 352**

——— **O. VIII, rr. 3, 4, 5**—*Pleadings—Averment in the plaint not denied specifically or by necessary implication in written statement—Fact not necessary to be proved—Practice—Limitation.* The plaintiffs sued to recover a sum of money on an account stated. For the purpose of saving limitation they relied in their plaint upon a letter sent by the defendants' firm. The defendants in their written statement stated :—" The plaintiffs' suit is not in time. The suit is not saved by the letter put in from the bar of limitation ". The question being raised whether in this state of the pleadings the letter could be taken as having been admitted. *Held*, that under rr. 3, 4, 5 of O. VIII of the Civil Procedure Code, 1908, the letter must be accepted as admitted between the parties and, therefore, unnecessary to be proved. LAXMINARAYAN *v.* CHIMNIRAM GIRDHARILAL (1916) . . . . **I. L. R. 41 Bom. 89**

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. VIII, r. 6**—

1. ——— *Set-off—Plaintiffs' claim based upon an account of goods supplied—Defendant pleaded by way of set-off amount of wages due—Claims based upon a money demand—Capacities of parties not varied—Set-off can be allowed.* The plaintiffs' claim was based upon an account of goods supplied to the defendant. The defendant admitted the claim but urged by way of set-off the amount of pay due to him by the plaintiff. The Subordinate Judge allowed the set-off and found that the plaintiffs' claim was satisfied. The District Judge was of opinion that it was not open to the defendant to urge by way of set-off the claim which he did urge. On application by the defendant to the High Court : *Held*, that under O. VIII, r. 6, it was competent to the defendant to urge by way of set-off the claim which he sought to urge as the capacity in both these cases was nothing but the personal capacity, the claims being based upon a money demand. RAGHAVENDRA RAOJI *v.* YALGURAD RAMCHANDRA (1916).

I. L. R. 41 Bom. 163

2. ——— *Set-off—Suit by clerk, who had left employment without notice, for arrears of wages—Counter-claim for damages in lieu of notice. Held*, in a suit by a clerk, who had left his employers without notice, to recover arrears of wages from his employers, that it was not competent to the defendants to counter-claim against the plaintiff for damages in lieu of notice. VICTORIA MILLS COMPANY, LIMITED, *v.* BRIJ MOHAN LAL (1917) . . . . **I. L. R. 39 All. 362**

——— **O. IX, rr. 4, 9 ; O. XLVII, r. 1**—

See SMALL CAUSE COURT SUIT.

I. L. R. 44 Calc. 950

——— **O. IX, r. 13**—*Decree ex parte as against one of several defendants—Such defendant not a party to appeal—Appeal dismissed as against contesting defendants—Application by non-appearing defendant to set aside ex-parte decree against her—Merger.* Where a person who was originally a party to a suit is not made a party to the appeal preferred against the decree passed in the suit, either as appeallant or respondent, and the Appellate Court has not adjudicated upon his case, the decree of the Court of first instance does not merge in that of the Court of Appeal. It is, therefore, open to such a person, if he is otherwise in a position to do so, to apply under O. IX, r. 13 of the Code of Civil Procedure, 1908, to the Court which passed the decree for an order to set it aside as against him. The following cases were referred to in the judgment of SUNDAR LAL, *J. Ramanadhan Chetti* v. *Narayanan Chetty, I. L. R. 27 Mad. 602, Sankara Bhatta*, v. *Subraya Bhatta, I. L. R. 30 Mad. 535, Damodar Manna* v. *Sarat Chandra Dhal, 13 C. W. N. 846 ; 3 Indian Cases 468, Kumud Nath Roy Chowdhury* v. *Jotindra Nath Chowdhury, I. L. R. 38 Calc. 394, Shajan Bibi* v. *Saffir-ud-din, 26 Indian Cases 412, Dhonai Sardar* v. *Tarak Nath Chowdhury, 12 C. L. J. 53, Intu Miah* v. *Dar Bakhsh Bhuiyan, 15 C. W. N. 798, Brij Lal Singh* v. *Chowdhry Mahadeo Prasad, 17 C. W. N. 133, Hedlot Khasia* v. *Karan Khasiani, 15 C. L. J. 241, Manomohini Chawdhrani* v. *Nara Narayan Rai, 4 C. W. N. 456, Palakdhari Rai* v. *Mankaran Rai, 7 All. L. J. 598*, and *Mathura Prasad* v. *Ram Charan*

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. IX, r. 13**—*concld.*

Lal, I. L. R. 37 All. 208. GAJRAJ MATI TIWARIN *v.* SWAMI NATH RAI (1916) . **I. L. R. 39 All. 13**

——— **O. IX, r. 13 ; O. XVII, r. 3**—*Procedure—Non-appearance of defendant—Decree passed on merits in absence of defendant—Appeal—Application for rehearing.* On a date to which the hearing of a suit before a Munsif had been adjourned the plaintiff and his witnesses were present, but the defendants were not. The Munsif heard the plaintiff's witnesses and decreed his claim. The defendants filed an application for a rehearing before the Munsif, who, however, rejected it. They then appealed against the decree to the District Judge, who dismissed the appeal. *Held,* on second appeal by the defendants against the District Judge's decree, that the defendants might and should have appealed against the rejection by the Munsif of their application for a rehearing ; but they had no right in their appeal from the decree to raise any question as to their non-appearance in the Court of first instance. HUMMI *v.* AZIZ-UD-DIN (1916).
I. L. R. 39 All. 143

——— **O. X, r. 4 ; O. XLIII, r. 1**—*Order striking out defence for failure of defendants to appear—Appeal.* Whether an order passed by a Court which is purporting to deal with one of the parties before it under the provisions of O. X., r. 4 of the Code of Civil Procedure does or does not amount to "pronouncing judgment" against that party depends upon the particular facts of each case. Where a Court struck off the defence of one defendant out of three but ultimately decided the case on the merits and passed a decree against all three defendants—their defences being similar, it was *held* that no appeal lay from the order of the Court under O. X, r. 4. MADHURI SURENDRA SAHI *v.* BITHAL DAS (1917).
I. L. R. 39 All. 450

——— **O. XXI, r. 2**—

See EXECUTION PROCEEDINGS.
I. L. R. 40 Mad. 233

——— **O. XXI, r. 2 ; O. XXXIV, rr. 4, 5**—*Preliminary decree—Decree ordering payment by instalments and, in default of payment of any one instalment, ordering execution for whole amount—Default made—Payment out of Court—Application for decree absolute—Limitation Act (IX of 1908), Sch. I, Art. 181. Held,* that O. XXI, r. 2 of the Code of Civil Procedure has no application to a decree for sale on a mortgage by which the mortgage money happens to be made payable by instalments. RAMJI LAL *v.* KARAN SINGH (1917).
I. L. R. 39 All. 532

——— **O. XXI, r. 2** (*3*)—*Transferee-decree-holder—Application to execute the decree—Transfer, benami for one of the judgment-debtors—Objection by another judgment-debtor—Competency of executing Court to inquire into title of transferee.* O. XXI, r. 2 (*3*), Civil Procedure Code (Act V of 1908), does not disentitle a judgment-debtor from proving facts which will show that a transferee of a decree applying for execution is merely a benamidar of another judgment-debtor, even if the facts on which he relies show that there has been a payment which has not been certified ; and, when the transferee is found to be such a benamidar, the Court is bound

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. XXI, r. 2** (*3*)—*concld.*

by O. XXI, r. 16, to refuse execution in his favour. RAMAYYA *v.* KRISHNAMURTI (1916).
I. L. R. 40 Mad. 296

——— **O. XXI, r. 13**—

See ADMINISTRATION SUIT.
I. L. R. 44 Calc. 890

——— **O. XXI, rr. 62, 63**—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS. 278, 282, 283, 287.
I. L. R. 41 Bom. 64

——— **O. XXI, r. 63**—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 11 . **I. L. R. 40 Mad. 733**

See RES JUDICATA.
I. L. R. 44 Calc. 698

——— **O. XXI, r. 66**—*Execution of decree—Sale proclamation—Valuation of property to be sold—Appeal. Held,* that no appeal will lie from a statement made in a sale proclamation as to the value of the property advertised for sale. *Sivagami Achi* v. *Subrahmania Ayyar, I. L. R. 27 Mad. 259,* followed. AJUDHIA PRASAD *v.* GOPI NATH (1917) . . . . **I. L. R. 39 All. 415**

——— **O. XXI, r. 71**—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 47 . **I. L. R. 39 All. 267**

——— **O. XXI, r. 72**—

See MORTGAGOR AND MORTGAGEE.
I. L. R. 41 Bom. 357

——— **O. XXI, rr. 92, 93**—*Execution of decree—Auction purchaser deprived of property purchased—Suit for refund of purchase money—Sale not set aside—Procedure. Held,* that under the present Code of Civil Procedure an auction purchaser who has been deprived by means of a suit against the judgment-debtor of the property purchased by him cannot obtain a refund of the purchase money without getting the auction sale set aside. *Munna Singh* v. *Gajadhar Singh, I. L. R. 5 All. 577,* distinguished. *Muhammad Najib-ullah* v. *Jai Narain, I. L. R. 36 All. 529, Shanto Chandar Mukerji* v. *Nain Sukh, I. L. R. 23 All. 355,* and *Dorab Ally Khan.* v. *Abdool Azeez, L. R. 5 I. A. 116,* referred to. NANNU LAL *v.* BHAGWAN DAS (1916) . **I. L. R. 39 All. 114**

——— **O. XXI, r. 93**—*Civil Procedure Code (Act XIV of 1882), ss. 313, 315—Auction sale under the Code, 1882,—Sale of property in which judgment-debtor had no saleable interest—Right of purchaser to refund of purchase-money—Suit—Application—Suit for possession—Cause of action—Right of suit, accrued before new Code—Effect of new Code on such right—General Clauses Act (X of 1897), s. 6* (c) *and* (e)—*Repealing statute, construction of.* Where the plaintiff, who purchased some lands in court auction in 1907, brought a suit to recover possession thereof in 1908, and failed in the suit in 1909 and in the Second Appeal therefrom in 1911 on the ground that the judgment-debtor had no saleable interest in the property, subsequently instituted a suit in 1914 for the recovery of the purchase money from the decree-holder, and the latter contended that the suit was not maintainable : *Held,* that the suit was maintainable, notwithstanding the provi-

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. XXI, r. 93**—*concld.*

sions of O. XXI, r. 93 of the Civil Procedure Code (Act V of 1908). The plaintiff had a right of suit under the old Civil Procedure Code (Act XIV of 1882); and such right having accrued to him while such Code was in force it could not be affected by the provisions of the new Code of Civil Procedure (Act V of 1908) by virtue of the provisions of s. 6 (*c*) and (*e*) of the General Clauses Act (X of 1897). As the right of the plaintiff to make an application under O. XXI, rr. 91 and 93, would have been barred before the new Code came into force the new Code should not be so construed as to apply to the present case. *Mohideen Ibrahim* v. *Mahomed Mura Levai, 23 Mad. L. J. 487, Parvathi Ammal* v. *Govindasami Pillai, I. L. R. 39 Mad. 803,* followed. *Rustomji Ardeshir Irani* v. *Vinayak Gangadhar Bhat, I. L. R. 35 Bom. 29,* dissented from. *Colonial Sugar Refining Company* v. *Irving, [1905] A. C. 369,* applied. *Abbott* v. *Minister for Lands, [1895] A. C. 425,* distinguished. *Gopeshwar Pal* v. *Jiban Chandra Chandra, I. L. R. 41 Calc. 1125,* followed. TIRUMALAISAMI NAIDU *v.* SUBARMANIAN CHETTIAR (1916).

I. L. R. 40 Mad. 1009

——— **O. XXII, r. 4**—*Partnership—Suit for dissolution—Death of defendant after preliminary decree—Application for substitution—Limitation.* In a suit for dissolution of partnership, after the preliminary decree was passed, one of the defendants died. Some two years after his death the plaintiff applied for substitution of the name of the heir of the deceased defendant, and asked the Court to proceed with the suit. *Held,* that in the circumstances O. XXII, r. 4 of the Code of Civil Procedure applied and the application was too late. *Jamnadas Chhabildas* v. *Sorabji Kharsedji, I. L. R. 16 Bom. 27,* followed. MOTI LAL *v.* RAM NARAYAN (1917) . . . . **I. L. R. 39 All. 551**

——— **O. XXIII, r. 1 and s. 107 (2)**—*Whether an Appellate Court has power to allow the withdrawal of the suit with liberty to file a fresh suit. Held,* by the Full Bench, that it is open to an Appellate Court in proper cases, when reversing the decree of the lower Court, to give the plaintiff leave to withdraw the suit, with liberty to file a fresh suit. *Choragudi China Kotayya* v. *Raja Varadaraja Appa Row, 27 Mad. L. J. 244,* overruled. KAMAYYA v. PAPAYYA (1916).

I. L. R. 40 Mad. 259

——— **O. XXIII, r. 3**—*Order recording petition of compromise—Jurisdiction of Court to decide whether suit has been settled out of Court when one party denies the settlement—Absence of authority of persons negotiating compromise.* There can be no doubt that when one party alleges, and the other denies, that a suit has been settled by a lawful agreement out of Court, the Court has power to decide whether there has been such a settlement and if this question is decided in the affirmative to grant a decree in accordance with the agreement. The Full Bench decision in *Broja Durlabh Sinha* v. *Romanath Ghose, I. L. R. 24 Calc. 908:* s. c. 1 *C. W. N. 597,* has been now given effect to by the alterations made from the language of s. 375 of the Civil Procedure Code of 1882 in O. XXIII, r. 3 of the Code of 1908. In this case the High Court on a consideration of the circumstances set aside the order of the lower Court recording a petition of compromise on the ground that none of the persons who took part in the negotiations were authorized to effect a compromise that was binding on the parties to the suit. ANADI KRISHNA DUTT *v.* PRIYA SHANKAR MAJUMDAR (1916).

21 C. W. N. 366

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. XXIII, r. 3**—*concld.*

——— **O. XXVI, rr. 9, 16, 17, 18**—*Agra Tenancy Act (II of 1901), s. 164—Suit for profits—Commissioner appointed to report as to actual collections—Evidence—Admissibility of report. Held,* that the report of a commissioner appointed by a Court of Revenue to ascertain the amount of actual collections in a suit for profits under s. 164 of the Agra Tenancy Act is admissible in evidence having regard to rr. 9, 16, 17, 18 of O. XXVI of the Code of Civil Procedure. BAKHTAWAR LAL *v.* SHEO PRASAD (1917).

I. L. R. 39 All. 694

——— **O. XXXIII, r. 8**—*Application to sue in forma pauperis not determined—Attachment before judgment, if may issue.* No order of attachment before judgment can be made at the instance of a person who has applied for leave to sue *in forma pauperis* before his application has been judicially determined in his favour. O. XXXIII, r. 8, clearly shows that there is no suit in existence until the application to sue *in forma pauperis* has been granted. PURNA CHANDRA CHABRI v. TARA PRASAD MAITY (1916) . . **21 C. W. N. 870**

——— **O. XXXIV, r. 5**—*Limitation Act (IX of 1908), Sch. I, Art. 181—Limitation—Decree for sale on mortgage—Appeal from preliminary decree—Application for decree absolute: Held,* that in a suit for sale on a mortgage, if an appeal has been preferred from the preliminary decree, the decree which is to be made absolute is the decree of the final Court of Appeal. In such a case, therefore, limitation for an application for a decree absolute runs not from the expiry of the term fixed for payment by the original decree, but from the date of the decree of the final Court of Appeal. *Shohrat Singh* v. *Bridgman, I. L. R. 4 All. 376, Muhammad Sulaiman Khan* v. *Muhammad Yar Khan, I. L. R. 11 All. 267,* and *Abdul Majid* v. *Jawahir Lal, I. L. R. 36 All. 350,* referred to. *Madho Ram* v. *Nihal Singh, I. L. R. 38 All. 21,* overruled *quoad hoc.* GAJADHAR SINGH *v.* KISHAN JIWAN LAL (1917).

I. L. R. 39 All. 641

——— **O. XXXIV, r. 8**—*Suit for redemption—Decree modified in appeal—Application to postpone day fixed for payment. Held,* that the power given by the proviso to O. XXXIV, r. 8 of the Code of Civil Procedure, 1908, is a power exercisable by the Court which has to execute the decree. Hence in the case of a decree passed by an Appellate Court an application for postponement of the day fixed for payment must be made to the Court of first instance, and not to the Court which passed the decree. *Ram Dhani Sahu* v. *Lalit Singh, I. L. R. 31 All. 328,* and *Dharmaraja Ayyar* v. *K. G. Srinivasa Mudaliar, I. L. R. 39 Mad. 876,* followed. BENI PRASAD *v.* HARNAM DAS (1917).

I. L. R. 39 All. 396

——— **O. XXXIV, r. 14**—*Transfer of Property Act (Act IV of 1882), s. 68—Execution of decree—Decree against heirs of deceased debtor—Execution sought against property once subject to a mortgage which had become time-barred. Held,* that

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. XXXIV, r. 14**—*concld.*

a decree in a suit under s. 68 of the Transfer of Property Act, 1882, against the heirs of a deceased mortgagee, as such heirs, for payment of money originally due under a mortgage, which, however, had become unenforceable by lapse of time, could be executed against any property of the deceased in the hands of the heirs, including the property once the subject of the mortgage, and that the bar of O. XXXIV, r. 14 of the Code of Civil Procedure did not apply. *Madho Prasad* v. *Debi Dial, All. W. N., 1891, page 168, Arunachalam Chetti* v. *Ayyavayyan, I. L. R. 21 Mad. 476, Khub Chand* v. *Kalian Das, I. L. R. 1 All. 240, Ponnappa Pillai* v. *Pappuvayyangar, I. L. R. 4 Mad. 1, Ganesh Singh* v. *Devi Singh, I. L. R. 32 All. 377, Madho Prasad Singh* v. *Baij Nath, All. W. N.*, 1905, page 152, *Kishan Lal* v. *Umrao Singh, I. L. R. 30 All. 146*, and *Indarpal Singh* v. *Mewa Lal, I. L. R. 36 All. 264*, referred to. CHEDI LAL *v.* SAADAT-UN-NISSA BIBI (1916) . . . **I. L. R. 39 All. 36**

——— **O. XXXVIII, r. 5, ss. 115, 145**—*Attachment before judgment—Surety for defendant—Death of defendant before hearing—Legal representative brought on record—Application by surety for discharge, whether premature.* The petitioner plaintiff having obtained an attachment before judgment against the defendant the opponent stood surety for the defendant whereupon the attachment was raised. The defendant died before the hearing of the suit and his widow was immediately brought on record as his legal representative. The surety afterwards applied to the Court for his discharge on the ground of the death of the defendant. The lower Court ordered that the surety should be discharged. The petitioner, therefore, applied to the High Court in revision. *Held*, that the order of the Court discharging the surety was premature and should be set aside under s. 115 of the Civil Procedure Code, 1908, as the proceedings had not come to an end, because they had been revived by the substitution of the widow of the defendant and the stage had not been reached at which the liability of the surety could be decided. CHANDULAL DALSUKHRAM *v.* JESHANGBHAI CHHOTALAL (1917).
I. L. R. 41 Bom. 402

——— **O. XL. r. 1**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 60 (*1*).
I. L. R. 40 Mad. 302

——— **O. XL, r. 1, and O. XLIII, r. 1**—

See RECEIVER . **I. L. R. 40 Mad. 18**

——— **O. XLI, r. 4**—

See HINDU LAW—ADOPTION.
I. L. R. 40 Mad. 846

——— **O. XLI, r. 21**—*Appeal decided ex parte—Application by respondent for rehearing—Non-appearance of counsel for respondent due to conduct of respondent's agent.* The respondent to a second appeal pending in the High Court appointed one Nathu Ram as his agent for the purpose of instructing counsel and of seeing that the appeal was properly prosecuted. Nathu Ram did instruct counsel but after a time took away the papers so that counsel was unable to appear, and the consequence was that the appeal was decreed

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. XLI, r. 21**—*concld.*

ex parte. Held, that this misconduct on the part of the agent afforded his principal no ground for applying for rehearing of the appeal. *Har Prasad* v. *Abdul Rahman, All. W. N.*, 1905, page 44, referred to. BAJI LAL *v.* NAWAL SINGH (1917).
I. L. R. 39 All. 388

——— **O. XLI, r. 23**—*Remand—Preliminary point—Issues framed and evidence taken, but suit decided upon one issue only. Held*, that it is competent to an Appellate Court to remand a case under O. XLI, r. 23 of the Code of Civil Procedure, 1908, where the Court of first instance having framed issues and recorded all the evidence has decided the suit with reference to its finding upon one of the issues framed by it, leaving the other issues undecided. *Mata Din* v. *Jamna Das, I. L. R. 27 All. 691*, followed. KAMTA *v.* PARBHU DAYAL (1916) . . . . **I. L. R. 39 All. 165**

——— **O. XLI, r. 33**—

See HINDU LAW—GIFT.
I. L. R. 40 Mad. 818

——— **O. XLVII, r. 1**—*Review of decree not appealed against.* On a proper construction of O. XLVII, r. 1 (*1*) the decree mentioned therein means a decree from which no appeal has been preferred by the applicant for review himself. That there is no implied reference to O. XLI, r. 4 in O. XLVII, r. 1 (*2*), the effect of which is to restrict the right which would otherwise be possessed by one defendant to apply to review of judgment, notwithstanding an appeal by a co-defendant. The law, in effect, is that a defendant who has not himself appealed may apply for a review of judgment, not with standing the pendency of an appeal by a co-defendant except in two contingencies, namely, *first*, where the ground for review is identical with the ground of appeal; and, *secondly*, when as respondent in the appeal he can present to the Appellate Court the case on which he seeks review. CHANDRA KANTO BHATTACHARJA *v.* LAKSHMAN CHANDRA CHAKRAVARTY (1916) . . . . . **21 C. W. N. 430**

——— **Sch. II, Paras. 15, 16**—*Arbitration—Agreement to refer pending suit—Agreement not made by all the parties to the suit—Award—Objection to validity of agreement to refer—Revision.* Out of twenty-one defendants, sixteen joined with the plaintiff in an application to refer the matter in the suit to arbitration. Of the remaining five defendants, three had not entered an appearance, and the Court had already passed an order that the case would be proceeded with *ex parte* as to them and as to the remaining two the plaintiff abandoned his claim against them. A reference was made and an award was delivered for payment of a sum of money by one of the defendants alone, and a decree followed in accordance with the award. *Held*, that there was a valid order of reference, or at any rate, one which the defendant against whom the award was made should not be permitted to challenge. *Pitam Mal* v. *Sadic Ali, I. L. R. 24 All. 229, Kadhu Singh* v. *Baljit Singh, I. L. R. 29 All. 423, Negi Puran* v. *Hira Singh, 6 All. L. J. 333, Ishar Das* v. *Keshab Deo, I. L. R. 32 All. 657, Haswa* v. *Mahbub, 8 All. L. J. 645* and *Sabta Prasad* v. *Dharam Kirti Saran I. L. R. 35 All. 107*, referred to. *Held, also*, that in view of paragraphs 15, 16 of the second schedule to the Code of Civil

CIVIL PROCEDURE CODE (ACT V OF 1908) —*concld.*

———— **Sch. II, Paras. 15, 16**—*concld.*

Procedure, 1908, the question whether there had been a valid reference to arbitration was a question reserved to the decision of the trial Court and ought not to be made the subject of the revisional jurisdiction of the High Court. *Lutawan* v. *Lachya, I. L. R. 36 All. 69,* referred to. AJUDHIA PRASAD *v.* BADR-UL-HUSAIN (1917) . **I. L. R. 39 All. 489**

———— **Sch. II, Paras. 16, 21 ; O. XXIII r. 3**—*Reference to arbitration—Decree on award—Appeal.* A suit was instituted against four defendants. Defendants Nos. 1 to 3 were absent, and as against them the Court ordered the proceedings to be *ex parte*. At the first hearing the plaintiff and defendant No. 4 appeared by counsel and an application was put in on behalf of the plaintiff, with the concurrence of the defendant No. 4, asking for an adjournment on the ground that negotiations for a compromise were going on. On the adjourned date the defendant No. 4 made an application intimating to the Court that Mr. W. S. Marris (then Collector of Aligarh) has been appointed as arbitrator, by agreement between the plaintiff and himself, and that the said arbitrator had consented to act and had begun to make inquiries, and prayed for an adjournment. The application was endorsed by the plaintiff's counsel. The adjournment was granted, and similar applications were from time to time made to the Court, and they were granted. Finally, the Court communicated with Mr. Marris himself, inquiring how soon he hoped to be able to complete the award, and fixed another date for the case. On that date the Court was informed that the inquiries had been completed and the award might be expected shortly. The absent defendants had in the meantime stated to Mr. Marris their agreement to accept his award. The award, having been submitted to the Court, the defendant No. 4 applied that the award might be filed and be made a rule of Court. The plaintiff objected on a variety of grounds. The Court below overruled all the objections and passed a decree in conformity with the award. On appeal to the High Court it was not contended that the decree was in excess of, or not in accordance with, the award. *Held,* that having regard to the substance, rather than to the form of the proceedings before the Court below, there was in this matter a reference to arbitration by the Court under the earlier paragraphs of the second schedule to the Code of Civil Procedure, and in the circumstances the appeal, which was against the decree based on the award, was not maintainable. *Nidamarthi Krishnamoorthy* v. *Garigiparti Ganapatilingam, 34 Indian Cases 741* and *Shama Sundram Iyer* v. *Abdul Latif, I. L. R. 27 Calc. 61,* referred to. KULSUM FATIMA *v.* ALI AKBAR (1917).
I. L. R. 39 All. 401

CLAIM CASE.

See RES JUDICATA.
I. L. R. 44 Calc. 698

COERCION.

See CONTRACT ACT (IX OF 1872), S. 72.
I. L. R. 40 Mad. 285

COLLUSION.

See DIVORCE **I. L. R. 44 Calc. 1091**

COLLUSIVE DECREE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 73 . **I. L. R. 40 Mad. 841**

COMMERCIAL INTERCOURSE WITH ENEMIES ORDINANCE (VI OF 1914).

———— **s. 3**—

See TRADING WITH THE ENEMY.
I. L. R. 40 Mad. 34

COMMISSIONER.

———— *Accounts—Power of the Commissioner to decide questions of law in the taking of accounts—High Court Rules (Original Side). Rr. 397, 399—Rules of the Supreme Court in England, O. LV, r. 69—Redemption suit—Motion for directions to the Commissioner.* The Commissioner to whom a suit is referred by a Judge on the Original Side of the High Court is entitled to decide questions of law which may arise while taking the accounts. It is not open to any of the parties to the reference to ask the Judge to give his opinion on questions of law which have arisen in the taking of accounts. The parties objecting to the decision of the Commissioner should proceed in the ordinary course by filing exceptions to his report. *Per* MACLEOD, *J.* I must not be taken as holding that the Court, once a reference has been made to the Commissioner, loses all control over the proceedings until the Commissioner has made his report. There may be cases in which the Court may find it necessary to withdraw the proceedings from the Commissioner and resume the hearing itself, but such cases must necessarily be of rare occurrence. It is a different matter to ask the Court to resume the hearing merely for the purpose of deciding certain questions which come within the powers of the Commissioner. LAXMIBAI *v.* HUSSAINBHAI (1916) . **I. L. R. 41 Bom. 719**

COMMON MANAGER.

———— *Bengal Tenancy Act (VIII of 1885), s. 95—Suit for general account after release of estate.* Where a common manager appointed under s. 95 of the Bengal Tenancy Act resigned and the estate was released, and where it was found that his account had not been properly rendered and passed by the District Judge :—*Held,* that he could be sued for account with the permission of the District Judge. *Naba Kishore Mandal* v. *Atul Chandra Chatterji, I. L. R. 40 Calc. 150,* distinguished. DURGA PRASANNA ROY *v.* ISHAN CHANDRA SHAHA (1916).
I. L. R. 44 Calc. 800

COMMUNICATION BY STRANGER.

JURY, TRIAL BY.
I. L. R. 44 Calc. 723

COMPANIES ACT (VI OF 1882).

———— **ss. 137, 141**—*Appointment of official liquidator, after order for winding up company—Appeal by the managing director against order appointing official liquidator, competency of.* A winding-up order terminates the appointment of directors, except for certain special purposes and a managing director is, therefore, not a competent person to file an appeal against subsequent order appointing an official liquidator. THE SOUTH INDIAN MILLS COMPANY, LTD. *v.* RAJA BAHADUR MOTILAL (1916) . . **I. L. R. 40 Mad. 706**

COMPANIES ACT (VII OF 1913).

——— **s. 38**—*Purchase of share at a Court sale—Rectification of register—Power of Court—Director's power to refuse to register a Court purchaser as a shareholder—Court's power to interfere with the discretion—Appeal to the High Court—Practice.* A purchaser of shares of a limited company at a Court-sale is not entitled as of right to have his name entered in the register of the company as a shareholder. He is subject to the same rules on this point as a private purchaser is. The proviso to s. 38 of the Indian Companies Act, 1913, should not be confined to the last clause, but must be read as a general reservation imposed on all clauses of the section. Having regard to the fact that under the proviso an appeal is allowed from the decision of an issue directed to be tried, it is necessary and desirable that there should be a clear direction as to the trial of an issue, so that there may be no obscurity on the point and no room for the argument that there was no issue directed to be tried and consequently no right of appeal. MANILAL BRIJLAL *v.* GORDHAN SPINNING AND MANUFACTURING COMPANY (1916).

I. L. R. 41 Bom. 76

——— **s. 134** (*4*)—*Default to submit balance-sheet to Registrar of Companies—Elements necessary to constitute offence.* In order to bring within the rule laid down in *Park* v. *Lawton* [*1911*], *1 K. B. 588*, a person whose defence to a charge under s. 134 (*4*) of the Companies Act is that compliance on his part with the requirements of the section was impossible on account of no general meeting having been held it is necessary, in the first instance, to show with reference to the provisions of s. 76 of the Act that the accused who was an officer of the company was knowingly a party to the default in holding the general meeting and where that question has not been inquired into at all the case has not been properly tried and the conviction cannot stand. RAJ KUMAR KUSARI *v.* KING-EMPEROR (1917) . . **21 C. W. N. 840**

——— **s. 162**—*Company—Petition for winding up—Circumstances justifying an order for winding up—"Just and equitable".* Certain share holders in a company registered under the Indian Companies Act, 1913, applied under s. 162 of the Act praying that the company might be wound up by the Court. Of the circumstances mentioned in s. 162 as justifying an order for winding up the only one which might have been applicable was that mentioned in cl. (*vi*); but all that was shown by the applicants was that the company had not of late years made any profits, and that the applicants themselves were apprehensive that, if the company continued to work, loss instead of gain would result. On the other hand it was not apparent either that the substratum of the company was gone or that the company was conceived and brought forth in fraud. *Held*, that the applicants had failed to make out a case that it was just and equitable that the company should be wound up. *In the matter of the* MAHAMANDAL SHASHTRA PRAKASHAK SAMITY, LTD., BENARES (1917).

I. L. R. 39 All. 334

——— **ss. 207 (ii), 208**—*Voluntary winding up—Appointment of liquidator—Liability of liquidator acting under irregular appointment.* A person who accepts an appointment as liquidator of a company which is being voluntarily wound up, and who acts as such, must, whether his appointment is regular or not, carry out the duties, as

COMPANIES ACT (VII OF 1913)—*concld.*

well as exercise the rights, of a liquidator and must make a return of his appointment to the Registrar of Joint Stock Companies as provided by s. 203 of the Indian Companies Act, 1913, and obtain his retirement in a proper manner, giving notice of that also. *Semble:* that it is competent to a company in general meeting assembled, under s. 207 (*ii*) of the Indian Companies Act, 1913, to delegate to the directors of the company the appointment of a liquidator. EMPEROR *v.* SATISH CHANDRA GHOSH (1917).

I. L. R. 39 All. 412

COMPANY.

See COMPANIES ACT (VII OF 1913), s. 162 . . **I. L. R. 39 All. 334**

See SET-OFF. **I. L. R. 40 Mad. 1004**

——— **winding up of—**

See COMPANIES ACT (VII OF 1913), ss. 207 (*ii*), 208 . **I. L. R. 39 All. 412**

COMPENSATION.

——— **for loss of crops by theft or cattle—**

See ESTATES LAND ACT (MAD. I OF 1908), ss. 4, 27, 73, 143.

I. L. R. 40 Mad. 640

——— *Fixtures, removal of—Calcutta Municipal Act (Beng. III of 1899), ss. 341, 617—Fixtures erected on buildings before 1st June, 1863—Assessment of compensation not a condition precedent to demolition of fixtures—Small Causes Court as Special Tribunal for determination of compensation—Amount of claim exceeding ordinary jurisdiction of Small Cause Court—Suit not cognizable by Subordinate Judge—Decree correct in substance, but not in form—Costs.* In s. 341 of the Calcutta Municipal Act (Beng. III of 1899) which in respect to fixtures erected on buildings "before 1st June, 1863," enacts that "the Corporation shall make reasonable compensation to every person who suffers damage by the removal or alteration of the fixtures", there is nothing that renders the assessment of compensation a condition precedent to the demolition of the fixtures. Until the removal is effected no damage at all is, in fact, suffered. S. 617, "where . . . . any municipal authority . . is required by . . . this Act to pay . . . . compensation, the amount to be so paid, and, if necessary, the apportionment of the same shall in case of dispute be determined . . . by the Court of Small Causes", includes a claim for compensation by a person against the Corporation for removal of fixtures, although the amount exceeds the ordinary jurisdiction of the Small Cause Court. In a suit in the Court of a Subordinate Judge by the appellants against the Corporation for compensation for removal of fixtures, they prayed for (*a*) a declaration that the fixtures in dispute had been erected before 1st June, 1863; (*b*) that they were entitled to compensation for the loss they would suffer by their compulsory removal; (*c*) that the Corporation could not remove the fixtures until reasonable compensation had been paid; (*d*) asked the Court to fix the amount of compensation; and (*e*) for an injunction restraining the Corporation from interfering with the fixtures until compensation was paid. The Subordinate Judge decreed the suit, giving compensation. It was dismissed, as being premature (under s. 341) and not cognizable by the Subordinate Judge (under s. 617) by

COMPENSATION—*concld.*

the High Court where the Corporation, though they had denied the fact in their written statement, admitted that the fixtures had all been erected before 1st June, 1863. *Held*, by the Judicial Committee, that the decree of the High Court though correct in substance was incorrect in form and their Lordships amended it by adding to it declarations that the appellants were entitled to relief in terms of (*a*) and (*b*) of the prayer of their plaint, the rest of the suit remaining dismissed. JOSEPH *v.* CORPORATION OF CALCUTTA (1916).

I. L. R. 44 Calc. 87

COMPLAINT TO MAGISTRATE.

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 650

COMPROMISE.

——— **by pardanashin guardian—**

See HINDU LAW—PARTITION.

L. R. 44 I. A. 229

1. ——— *Minor—Court of Wards, compromise by, on behalf of minor ward, whether subject to sanction of Civil Court—Court of Wards Act (Beng. IX of 1879), ss. 18, 51—Civil Procedure Code (Act XIV of 1882), ss. 462, 464.* The sanction of the Civil Court (required by s. 462 of the Civil Procedure Code of 1882) is not necessary for a compromise entered into under the authority and by the direction of the Court of Wards on behalf of a minor under their charge. NAKIMO DEWANI *v.* PEMBA DITCHEN (1917).

I. L. R. 44 Calc. 829

2. ——— *Petition of compromise reciting a verbal mortgage in a proceeding prior to Transfer of Property Act (IV of 1882)—Destruction of record, suit to redeem mortgage after—Certified copy of petition, if admissible and if constitutes mortgage document—Petition, if should be stamped—Copy bearing one-rupee stamp—Original petition, if must have been stamped with one-rupee stamp—Court-fees Act (VII of 1870).* On April 1st, 1857, the parties to a suit filed a petition of compromise reciting the terms on which the dispute was settled, among them being an agreement by one party who was recognized as owner to grant a usufructuary mortgage to the other. The Judge ordered the compromise to be placed on the record and the case to be put up for final disposal on the following day. The record of the proceedings having been destroyed, in the present suit for redemption of the mortgage a certified copy of the petition bearing a stamp of Re. 1 only was produced as evidence of the agreement: *Held*, that the certified copy was rightly admitted in evidence relative to the facts recited therein. That the suit was not brought on the petition, but on an antecedent verbal mortgage, valid according to the law in force before the Transfer of Property Act; and did not depend upon whether the petition was fully stamped or not. That if the Judge did pass his formal order as he proposed to do, no objection could be taken on the ground of the stamp on the petition being insufficient. That no inference could be drawn from the copy bearing a one-rupee stamp (which was the proper stamp for issuing a copy under the Court-fees Act of 1870) that the original petition (if it be treated as the document creating the mortgage) was not properly stamped. AHMAD RAZA *v.* SAIYID ABID HUSAIN (1916).

21 C. W. N. 265

COMPROMISE DECREE.

——— **effect of—**

See MUTT . . **I. L. R. 40 Mad. 177**

COMPULSORY ACQUISITION.

See LAND ACQUISITION.

I. L. R. 44 Calc. 1219

CONDITIONAL ORDER.

See OBSTRUCTION.

I. L. R. 44 Calc. 61

CONDONATION.

See DIVORCE . **I. L. R. 44 Calc. 109**

CONSCIOUS POSSESSION.

See COUNTERFEIT COIN.

I. L. R. 44 Calc. 477

CONSEQUENTIAL RELIEF.

See COURT-FEE . **I. L. R. 44 Calc. 352**

CONSIDERATION.

See CONSTRUCTION OF DOCUMENT.

I. L. R. 41 Bom. 5

——— **failure of—**

See BILL OF EXCHANGE.

I. L. R. 41 Bom. 566

See LIMITATION ACT (IX OF 1908), SCH. 1, ART. 97 . **I. L. R. 41 Bom. 31**

CONSPIRACY.

See DAMAGES . **I. L. R. 41 Bom. 137**

CONSTRUCTION.

See POWER-OF-ATTORNEY.

I. L. R. 41 Bom. 40

See WILL . . **I. L. R. 44 Calc. 181**

CONSTRUCTION OF DEED.

——— *Intention of parties—Position of the parties and position of affairs at the time of the agreement to be considered—Predeceased son's widow, ekrarnama with, of legal heir—Property given, whether absolute or limited estate—Absolute right or given for maintenance—Hindu Widows' Remarriage Act (XV of 1856), s. 2, remarriage of widow, if causes forfeiture of the property—If the section applies in the cases of widows who according to their caste rules are permitted to remarry—Father-in-law's property, the husband having predeceased, if comes within the category of 'deceased husband's property' within the meaning of s. 2 of the Act.* A, a Hindu governed by the Mitakshara law, died leaving a daughter B, and two predeceased sons' widows, C and D. After A's death, the daughter B, and the two widows, C and D, to settle family differences, executed an *ekrarnama* and divided the property left by A into three equal shares, the property in C's share being a house, which she let out to a tenant. Subsequently, the widow C remarried. The present suit was brought by the widow C for declaration of title to, and for possession of, the house and for arrears of rent. Plaintiff alleged that by the family arrangement (*viz.*, the *ekrarnama*) she got an absolute estate, whereas defendants pleaded that she had got only a life interest by way of maintenance, which interest, too, was forfeited on her remarriage. *Held, per* SANDERSON, *C.J.*—In construing the deed the Court has to take into consideration the position of the parties who

CONSTRUCTION OF DEED—*concld.*

executed the document and the position of affairs at the time the agreement was entered into, as also the real intention of the parties, in ascertaining which the Court has to consider the whole of the document and to consider all its terms one with the other. The intention was that plaintiff should have some property for maintenance and the agreement was entered into upon the basis of the plaintiff's right to maintenance. The word "heir" in the agreement, having regard to the other provisions of it, was not used in the strict legal sense, but rather as a word implying persons interested in the estate. The widow by her remarriage forfeited all her interest in the estate. Though the plaintiff belonged to a caste which by custom allowed the remarriage of a widow that in itself would not prevent her from forfeiting her right to maintenance out of the deceased husband's property. The deceased husband having had an interest in the ancestral property out of which she would be maintained during his life the obligation to maintain her out of that property continued after his death, when the property passed by survivorship, and the property passed to the defendant No. 3 (the daughter), subject to the plaintiff's right to maintenance. It does not much matter whether s. 2 of the Widow Remarriage Act applies or not, because this section is practically a statement of the Hindu Law as it existed apart from the Act, so far as it related to the forfeiture of a widow's interest on her remarriage. *Per* CHATTERJEA, *J.*—In construing the document we should bear in mind the position of the party making the grant and of the person taking it. The daughter herself had no absolute right, and she could not confer an absolute right. If expressions used in the deed are capable of both constructions contended for by both the parties then that construction should be adopted which is consistent with the law to which the parties are subject. The husband had an interest in the property (which was ancestral property) out of which plaintiff was entitled to be maintained during his life, and the obligation to maintain her out of that property continued after his death, whether it passed by inheritance or by survivorship. This being so, there is no doubt that the property that the plaintiff obtained under the document was by way of maintenance out of the property of her deceased husband in the hands of the daughter. The question whether s. 2 of the Act is applicable to the case, because the plaintiff, according to the custom of the caste to which she belongs, could have remarried independently of the Act, is of no practical importance, as on the general principles of Hindu law a widow whose remarriage may be legal according to the custom of the caste to which she belongs would forfeit any interest which she had in the husband's estate on her remarriage. The plaintiff, [therefore, forfeited her interest in the property to the extent she obtained it by way of maintenance. MAHAMMAD UMAR *v.* MAN KUAR (1917) . . . . . **21 C. W. N. 906**

CONSTRUCTION OF DOCUMENT.

See CIVIL PROCEDURE CODE (1908), O. 11, R. 2; O. XXXIV, RR. 2, 4.
I. L. R. 39 All. 506

See HINDU LAW—ENDOWMENT.
I. L. R. 39 All. 553

See MAHOMEDAN LAW—GIFT.
I. L. R. 41 Bom. 372

CONSTRUCTION OF DOCUMENT—*concld.*

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 58 . **I. L. R. 39 All. 244**

1. ——— *Sale of houses in consideration of Mehr—Consideration not necessary to support transaction—Limitation Act (IX of 1908), Sch. I, Arts. 142, 144.* The plaintiff's husband sold to her two houses in 1898 by a registered document in consideration of her *Mehr* (dowry). One of the houses sold remained in the occupation of the plaintiff's husband from 1898 till his death in 1911. Soon after his death the defendants took possession of the houses. The plaintiff, having sued to recover possession, the lower Courts dismissed the suit on the grounds that the sale of 1898 was a sham and supported by no consideration and that the claim was barred by limitation. On appeal: *Held,* that the deed of 1898 was on the face of it a document of advancement and needed no consideration. *Held, also,* that the possession of the house by the plaintiff's husband up to 1911 being permissive, the plaintiff was in constructive possession of it, and her claim was, therefore, not barred by limitation. IBRAHIM BHURA *v.* ISA RASUL (1916).
I. L. R. 41 Bom. 5

2. ——— *Will—Dedication of property for religious purposes—Expenditure on religious objects amounting to only a small portion of the income, the rest being assigned for the maintenance of the testator's family.* The will of a Hindu provided that the worship of certain idols should be maintained out of the property dealt with thereby, but the rest of the property was assigned to the maintenance of the heirs of the testator generation after generation. The income of the property was about Rs. 7,000 annually, but the customary expenses of the religious rites and ceremonies amounted to only some Rs. 500 per annum. *Held,* on a construction of the will, that it created a charge on the estate for the expenses of the idols, and that, subject to that charge, the property was to go to the testator's legal heirs, who were fully entitled to appropriate all the income of the property. *Sonatun Bysack* v. *Sreemutty Jugguttsoondre Dosee, 8 Moo. I. A. 66,* and *Ashutosh Dutt* v. *Doorga Churn Chatterjee, I. L. R. 5 Calc. 438,* referred to. SURJA KUNWARI *v.* HAR NARAIN RAM (1917) . . . **I. L. R. 39 All. 311**

CONSTRUCTION OF STATUTES.

See STATUTES, CONSTRUCTION OF.

——— *Per* MOOKERJEE, *J.* In construing a section of an Indian Act which is professedly based on an English enactment which, in fact, reproduces almost word for word the language of the English enactment, we are in practice, if not in theory, bound by the decision of the English Court of Appeal. RAMENDRA NATH RAY *v.* BROJENDRA NATH DASS (1917).
21 C. W. N. 794

CONSTRUCTION OF WILL.

See WILL, CONSTRUCTION OF.
I. L. R. 41 Bom. 70

CONTEMPT OF COURT.

See PROFESSIONAL MISCONDUCT.
I. L. R. 44 Calc. 639

——— *What constitutes contempt—Actual impediment of justice, if necessary to complete offence—Jurisdiction of High Court to punish summarily contempt out of Court—Liability*

CONTEMPT OF COURT—*contd.*

of printer and publisher of newspaper, irrespective of knowledge of contents of offending publication—Summary jurisdiction in respect of contempt, when should be exercised—Civil and criminal contempt, distinction between—Contempt by attack on Court, criminal, nature of—Rule of interpretation applicable to writing constituting contempt—Evidence Act (I of 1872), s. 74—Returns filed with Registrar of Joint Stock Companies, if public document and secondary evidence thereof is admissible—Onus on party producing certified copy to prove execution of document—Liability for contempt of director of limited company owning newspaper—Proceeding in contempt, if lies against Corporations—Necessity of legislation for the registration of editors of newspapers. In a suit decided in the Original Side of the High Court the trial Judge (GREAVES, *J.*) held that the Calcutta Improvement Trust had power to acquire land compulsorily for the purpose of recoupment. In an appeal against a decision of the Subordinate Judge of 24-Parganahs two Judges of the Court (MOOKERJEE and CUMING, *JJ.*) sitting as a Division Bench on the Appellate Side held that the Trust had no such power. When the appeal against the decision of the single Judge in the Original Side was ready for hearing the following two articles appeared in the "Amrita Bazar Patrika" newspaper in two of its issues:— (i) "There is a mischievous rumour afloat which should be contradicted. It is stated that a vigorous attempt is being made to get up a Bench to consider the appeal on the judgment of Mr. Justice Greaves in connection with the acquisition of surplus land by the Calcutta Improvement Trust according to somebody's choice. We do not believe that it is possible for anyone, far less the Chairman of the Trust, to secure a Bench after his own heart as a counterpoise to the Mookerjee and Cuming Bench. We are sure the interest of every ratepayer is safe in the hands of the Hon'ble Judges and we do not think that any official of the Trust can go so far". (ii) "Something like consternation prevails on account of the proposed new constitution of the Appellate Bench of the Calcutta High Court before which appeals against the awards of the Improvement Trust are to be heard. It is known to the reader how this Bench was originally composed of Sir Asutosh Mookerjee and the Hon'ble Justice Cuming, and how, latterly, it has come to be presided over by the Hon'ble the Chief Justice and Mr. Justice Woodroffe. Rumour has it that for purposes of hearing Improvement Trust appeals the Bench is going to be strengthened by the appointment of Mr. Justice Chitty. Now what neither the public nor ourselves can understand is this special arrangement for such a Special Bench. If it is contended that two Hon'ble Judges of the highest Court in the land are incompetent to decide in appeal cases in which the Improvement Trust is concerned, a contention, however, which we do not believe the Chief Justice will care to advance, why should there be a Special Bench of three, and not a Full Bench of five, on which at least two Indian Judges could find seats? As a matter of fact, as landowners in Calcutta are mostly Indians, and as Indian Judges are likely to know more of the conditions, practices, etc., prevailing here, it is but meet that the Appellate Bench in the present circumstances should be so composed as to associate Indian Judges with their European colleagues. The withdrawal of Sir Asutosh has given rise to unsavoury impressions in the public mind since

CONTEMPT OF COURT—*contd.*

this proposed arrangement is to follow close upon the heels of his judgment in the case of *The Improvement Trust* v. *Chandra Kanta Ghosh, 21 C. W. N. 8.* Be that as it may, we have perfect faith in the present Chief Justice and believe that as soon as Sir Lancelot Sanderson understands the public feeling in the matter his Lordship will rather form a Full Bench, or at least associate an experienced Indian Judge with himself, for the hearing of Improvement Trust appeals". Proceedings in contempt were taken against the printer and publisher of the newspaper and the directors and manager and secretary of the company called "The Amrita Bazar Patrika Co., Ltd." to which the newspaper belonged in respect of the said two articles: *Held*, that the articles constituted a contempt of Court not only on the ground that they scandalized the Court, but also on the ground that they were calculated to prejudice a litigant and interfere with the due course of justice. That the High Court in the Indian Presidencies are Superior Courts of record. The offence of contempt of Court and the power of the High Court to punish it are the same in such Courts as in the Superior Courts in England. It has the power of summarily punishing for contempt out of Court in relation to any of its jurisdictions. That the jurisdiction to punish for contempt is not obsolete. That the printer and publisher of a newspaper is liable for contempt even though he was not aware of the subject constituting such contempt. Necessity of legislation for the registration of the editor of a newspaper pointed out and what constitutes contempt of Court discussed. *Held, per* SANDERSON, *C.J.*—That the jurisdiction which the Court has in respect of a contempt of Court should be exercised with great care, and should only be exercised when the case is beyond all reasonable doubt, and this should especially be the case when the proceedings are at the instance of the Court itself. That the question was not whether the article, in fact, obstructed or interfered with the due course of justice, but whether it was calculated to obstruct and interfere with the due course of justice. *Per* WOODROFFE, *J.*—That all proceedings, whether in respect of civil or criminal contempts, are of a criminal nature when their object is to punish by fine or imprisonment, but the procedure in such cases is not in all respects the same as in an ordinary criminal case. Both the offence, as also the jurisdiction and procedure under which it is tried, are *sui generis*. As regards the standard of proof there is but one rule of evidence which in India applies to both civil and crimial trials and that is contained in the definition of "proved" and "disproved" in s. 3 of the Evidence Act. Whether the case is civil or criminal a fact is only proved or disproved if it comes within the terms of that section. *Per* MOOKERJEE, *J.*— That a criminal contempt is conduct that is directed against the dignity and authority of the Court. A civil contempt, on the other hand, is failure to do something ordered to be done by a Court in a civil action for the benefit of the opposing party therein. Consequently, in the case of a criminal contempt the proceeding is for punishment of an act committed against the majesty of the law and as the primary purpose of the punishment is the vindication of the public authority the proceeding conforms as nearly as possible to proceedings in criminal cases. In the case of a civil contempt, on the other hand, the proceeding, in its initial stages at least,

CONTEMPT OF COURT—*contd.*

when the purpose is merely to secure compliance with a judicial order made for the benefit of a litigant, may be deemed instituted at the instance of the party interested and thus to possess a civil character. But here also refusal to obey the order of the Court may render it necessary for the Court to adopt punitive measures against the person who has defied its authority; at that stage, at least, the proceedings may assume a criminal character. Where the contempt consists in an attack upon the Court the proceedings instituted to vindicate its dignity are of a criminal nature, even though the attack has been made in connection with civil suits or appeals either actually decided or pending or about to be taken up for disposal. That in deciding whether there has been a contempt the obvious course to pursue is to read the offending words as they stand and to attach to the words used their natural meaning without the assistance of a laborious commentary. It is incumbent on the Court in all cases to consider the general tone of the writing. The meaning and intent are to be determined by a fair interpretation of the language used and are matters of law for the Court as to whether or not they constitute contempt. Disclaimer on the part of the publisher as to any intentional disrespect to the Court is, consequently, not a sufficient defence when the purpose and meaning of the writing is obviously of a contrary import. If the language is fairly capable of an innocent interpretation the Court will not be astute to read into it a sinister import. But if the intent is fairly clear liability to punish for contempt of Court cannot be successfully evaded by the use of a transparent artifice. That the two articles relating to the same topic and published in the editorial columns of the same newspaper at a brief interval of time between them might legitimately be read together to determine their scope and purpose, even though they were proved not to have been written by the same person. *Per* WOODROFFE and MOOKERJEE, *JJ.*—That the returns in the custody of the Registrar of Joint Stock Companies constitute public records of private documents within the meaning of s. 74 sub-s. (2) of the Evidence Act, and secondary evidence thereof is admissible under s. 65, cl. (*e*). *Per* MOOKERJEE, *J.*—That although secondary evidence may be admissible, the party who produces the evidence is not relieved of his obligation to prove the execution of the document just as if the original had been produced unless the case is covered by s. 90 of the Evidence Act or the legislature has expressly provided that the document or endorsement thereon is receivable in evidence without proof of execution. *Per* MOOKERJEE, *J.*—That the statement in the affidavits of two of the defendants could not be used to the detriment of the other defendants as the proceeding was in the nature of a criminal trial and supplementary evidence could not be given so as to prejudice the defendants. *Per* MOOKERJEE, *J.*—That it cannot be held as a matter of law that the directors of a limited company which owns a newspaper are liable to be committed for contempt of Court on account of a libel published in the paper. *Per* WOODROFFE, *J.*—That the question whether persons in the position of directors are responsible must depend on the facts of each case. *Per* MOOKERJEE, *J.*—That proceedings by way of contempt would lie against Corporations, as well as individuals; in the case of individuals the process

CONTEMPT OF COURT—*concld.*

is by attachment of the person, followed by fine or imprisonment or both; in the case of Corporations the process is by fine, followed by sequestration or distraint. The Court sentenced the printer and publisher to pay a fine of Rs. 300 and discharged the other defendants in the absence of proof of their complicity with the publication of the offending articles. *In the matter of the* AMRITA BAZAR PATRIKA (1917) . **21 C. W. N. 1161**

CONTRACT.

See CONTRACT OF GUARANTEE.

See CONTRACT OF SERVICE.

——— **breach of—**

See LOSS OF GOODS.

I. L. R. 44 Calc. 16

——— **construction of—**

See MORTGAGE . **I. L. R. 44 Calc. 542**

——— *Agreement for carriage of goods by rail—Risk note—Liability of company for goods consigned on a risk note—Burden of proof.* Where goods are booked for carriage by railway under a "risk note" and are lost in transit it lies upon the consignor claiming damages against the railway company to show that the loss was occasioned by the theft or wilful neglect of the company's servants. *Sheobarat Ram* v *The Bengal and North-Western Railway Company, 16 C. W. N. 766*, referred to. *Bengal and North-Western Railway Company* v. *Haji Mutsaddi, 7 All. L. J. 833*, distinguished. EAST INDIAN RAILWAY COMPANY *v.* NATHMAL BEHARI LAL (1917).

I. L. R. 39 All. 418

CONTRACT ACT (IX OF 1872).

——— **ss. 1, 118**—*Evidence Act (I of 1872), s. 92—Contract for sale and purchase of piece-goods to be manufactured according to sample—Purchasers to clear goods within twenty-four hours of their being ready for delivery—Notice of the goods being ready for delivery tantamount to tender—Delivery to be taken by signing a delivery order—Goods and price debited to purchasers on signing a delivery order—Goods tendered different in quality and design from sample—Contract providing for reference to arbitration—Power of arbitrators to award an allowance in price when difference in quality not unreasonable—Parties requesting arbitrators to award an allowance bound by the award—Custom of the trade permitting allowance if the difference in quality not unreasonable—Custom cannot vary written contract.* In September and October, 1913, the defendants entered into seven contracts with the plaintiffs, referred to under the letters A to G, for the sale and delivery of piece-goods of certain specified descriptions. The contracts provided for delivery of the goods by instalments within a fixed period. As soon as the goods were ready for delivery the defendants sent a delivery order to the plaintiffs, whereupon the plaintiffs would either remove the goods from the defendants' premises or sign the delivery order acknowledging that the goods had been taken delivery of and the price debited to them, in which case the goods remained with the defendants at the risk of the plaintiffs. The goods were subsequently cleared by the plaintiffs at their convenience on payment of the price, interest thereon at 9 per cent, warehouse rent, and all other charges. A common feature of all the con-

CONTRACT ACT (IX OF 1872)—*contd.*

——— ss. 1, 118—*contd.*

tracts was that the defendants had agreed not to give delivery of similar goods to other customers during the period fixed for delivery under the plaintiffs' contracts. Contract A was for the 251 bales, of which the plaintiffs took delivery of some while the contract was cancelled as regards others, and 84 bales remained the subject of dispute as the plaintiffs contended that the bales were inferior in quality and were not otherwise in accordance with the contract. The dispute was referred to the arbitration of two experts in the trade nominated by the parties. During the survey of the goods, both parties being represented by their respective salesmen, the arbitrators were asked by the plaintiffs to award an allowance in price in the event of their holding that the goods are different in quality from the sample. The arbitrators found that there was a difference in finish, quality, width, and, in some cases, of design and colour, and they decided that the plaintiffs were entitled to an allowance of 4 annas per piece but must take delivery of the 84 bales with the allowance. The plaintiffs, however, refused to take delivery of the bales with any allowance on the ground that they were not bound to do so under their contract and that the arbitrators had, in fact, acted beyond the scope of the reference under the contract. Contracts B, C, and D covered 658 bales, of which 159 were taken delivery of by the plaintiffs who refused to take delivery of the rest on the ground that the defendants had committed a breach of the condition not to give delivery of similar goods to other dealers during the period fixed for delivery under the plaintiffs' contracts. Contracts E, F, and G covered 305 bales, of which 150 were taken delivery of, while as to 42 the contract was cancelled and the plaintiffs demanded the balance of 113 bales on payment of Rs. 7,236 being the amount due by them on an account being taken in respect of all the seven contracts. The defendants refused to deliver the 113 bales on receipt of Rs. 7,236 but claimed Rs. 34,734-7-6, the contract price thereof. The plaintiffs thereupon filed a suit asking for delivery of 113 bales on payment of Rs. 7,236. The defendants pleaded that, with respect to 84 bales under the contract A, the plaintiffs were bound by the award of the arbitrators, and that with respect to 499 bales under the contracts B, C, and D, the plaintiffs wrongly rejected to take delivery thereof, as the defendants has given delivery of goods to other customers by sending them delivery orders and obtaining their signatures before the period of plaintiff's contracts had begun to run. The defendants counter-claimed Rs. 2,00,230-12-0 in respect of 722 bales, of which the plaintiffs failed to take delivery. The defendants subsequently amended the written statement by pleading a custom of the trade that the buyer could not reject for difference in quality provided the same was not excessive or unreasonable and could be met by an allowance in the price. *Held*, (*i*) that the custom alleged by the defendants was inconsistent with the stipulation in the contract that a certain quality of goods should be delivered in return for payment of a certain fixed price. *In re North-Western Rubber Company, Limited, and Huttenbach & Co.* [*1908*], *2 K. B. 907*, followed. *In re Walkers, Winser, & Hamm and Shaw, Son, & Co.* [*1904*], *2 K. B. 152*, not followed; (*ii*) that the plaintiffs were bound by the award of the arbitrators made in pursuance of their request, and not objected to by their opponents. *Re an arbitration between Green & Co. and Balfour, Williamson & Co., 63 L. T. 525*, referred to; (*iii*) that the defendants had not committed a breach of the contracts B, C, and D as the debiting of the goods to the buyers and their signing a delivery order marked the period of delivery rendering them liable for not clearing the goods from the premises of the defendants who held as warehousemen and bailees for the buyers; and (*iv*) that the plaintiffs' suit should be dismissed and the defendants' counter-claim be allowed. RUTTONSI ROWJI *v.* THE BOMBAY UNITED SPINNING AND WEAVING CO. (1916).

I. L. R. 41 Bom. 518

CONTRACT ACT (IX OF 1872)—*contd.*

——— ss. 1, 118—*concld.*

——— s. 11—

See MINOR . **I. L. R. 40 Mad. 308**

——— s. 20—*Contract made under a mutual mistake as to the nature and extent of vendor's title—Contract to grant mining lease by Mogoli Brahmattardar at a time when Brahmattardars generally were believed to own subsoil rights—Refusal to complete contract on decisions of Court throwing doubts on the law—Suit for refund of advances—Specific Relief Act (I of 1877), s. 36.* In October, 1908, the defendants, who owned a share in some *Mogoli Brahmattar* land, contracted to give the plaintiffs a lease the object of which was to enable the plaintiffs to work coal underground. The contract expressly provided that there should be a good title. At this time it was generally believed that the rights of the tenure-holders included all mineral rights. The plaintiffs advanced some moneys but, later, when the decision of the Privy Council, in *Abhiram* v. *Shyama Charan, I. L. R. 36 Calc. 1008*: s. c. *16 C. W. N. 1*; and *Hari Narayan Singh* v. *Sriram Chuckerbutty, 14 C. W. N. 746*, threw doubts upon this understanding of the law, the plaintiffs refused to carry out the contract unless defendants satisfied them as to their title to the property, which, the defendants not having done, the plaintiffs sued for refund of the advances: *Held*, that the contract was void under s. 20 of the Indian Contract Act as having been entered into under a mutual mistake. That the contract had also been broken by the defendants by their failure to show a good title and to cure the defect therein, and the plaintiffs were entitled to recover the money advanced by them. RAM CHANDRA MISRA *v.* GANESH CHANDRA GANGOPADHYAY (1916).

21 C. W. N. 404

——— s. 23—

See LIMITATION ACT (IX OF 1908), s. 19.

I. L. R. 40 Mad. 701

1. ——— *Contract — Agreement opposed to public policy—Assignment of mortgage taken by a patwari. Held*, that the taking of an assignment of a mortgage by a patwari is not a transaction opposed to public policy within the meaning of s. 23 of the Indian Contract Act, 1872. *Shiam Lal* v. *Chhaki Lal, I. L. R. 22 All. 220*, and *Sheo Narain* v. *Mata Prasad, I. L. R. 27 All. 73*, overruled. BHAGWAN DEI *v.* MURARI LAL (1916). . . . . **I. L. R. 39 All. 51**

2. ——— *Contract—Agreement opposed to public policy—Purchase by a kanungo of mortgaged property. Held*, that there exists no legal prohibition against a kanungo purchasing mortgaged property and suing to redeem the mort-

CONTRACT ACT (IX OF 1872)—*contd.*

gage existing on it, nor is such a transaction opposed to public policy within the meaning of s. 23 of the Indian Contract Act, 1872. KAMALA DEVI *v.* GUR DAYAL (1916).

I. L. R. 39 All. 58

——— ss. 23, 65—

See AGRA TENANCY ACT (II OF 1901) ss. 10, 20, 83 . **I. L. R. 39 All. 173**

——— s. 25—"*Debt*", *meaning of.* A promise to pay the amount which may be found due by arbitrator on taking accounts between the parties is not a promise to pay a "debt" within the meaning of s. 25 of the Indian Contract Act (IX of 1872), the amount not being a liquidated sum. The decision of SUBRAHMANYA AYYAR, *J.*, in *Sabju Sahib* v. *Noordin Sahib, I. L. R. 22 Mad. 139, 143,* followed. DORAISAMI PADAYACHI *v.* VAITHILINGA PADAYACHI (1916).

I. L. R. 40 Mad. 31

——— ss. 27, 65—*Agreement in restraint of trade—Sale of goodwill with undertaking to abstain from business for a term—Goodwill, what is—Buying off a newly-started rival business, if purchase of goodwill—Agreement not divisible, wholly void—Compensation.* Defendant had been carrying on business as a carrier of passenger by boats between certain terminal stations calling *en route* at certain intermediate stations. Plaintiff started a rival business and having secured the terminal ghats could embark and re-embark passengers at more central points. After running it for a few months during which he did not acquire a name for punctuality, safety, or convenience, he was bought off by defendant by an agreement by which for a consideration to be paid by defendant, he purported to transfer his leases of ghats and his "goodwill" and bound himself not to exercise the business for a period of three years. *Held,* that plaintiff had no "goodwill" to transfer and the word "goodwill" was introduced into the agreement only to circumvent the provision of s. 27 of the Contract Act, which the undertaking to abstain from carrying on boat business for three years contravened. The provision of s. 27 making agreements in restraint of trade not permitted by the exceptions to that section "to that extent" void implies that, if the agreement can be broken up into parts, it will be valid in respect of those parts which are not vitiated as being in restraint of trade. *Held,* that in the present case the agreement not being divisible was wholly void. That the agreement being found void, under s. 65 of the Contract Act, defendant should be made to compensate the plaintiff for the advantages he had received under it. PARASULLAH MULLIK *v.* CHANDRA KANTO DAS (1917) . . . . . **21 C. W. N. 979**

——— s. 41—

See MORTGAGE . **I. L. R. 39 All. 178**

——— ss. 44, 74—

See PENALTY . **I. L. R. 44 Calc. 162**

——— s. 56—*Sale of goods—C. I. F. contract—Payment against delivery of goods—Outbreak of war while contract still executory—Effect of war on contract—Prize Court—Impossibility of performance of contract.* A contract contained in a letter provided for the sale by the defendants-appellants to the plaintiffs-respondents of 150 tons of basic steel bars "at £5 7*s.* 6*d.* per ton c. i. f., *i.e.,* free Hooghly. Shipment in three monthly lots . . . . . Terms 45 days' credit from the date of the delivery of the goods". The appellants caused the goods to be shipped from Antwerp on the 2nd July, 1914, on a German steamer, the S.S. "*Steinturm*". That steamer was on the high seas on the outbreak of war between England and Germany on August 4th, 1914. Then she was captured by the British Government and taken to Colombo as prize. After condemnation of the ship by the Prize Court the goods were sent on to Calcutta in charge of the Crown and the latter wanted certain extra charges to be paid before the goods could be delivered to the consignees in Calcutta. The buyers, respondents, refused to pay these charges, and the sellers, appellants, thereupon sold the goods to third parties. On the buyers, respondents instituting a suit to recover a certain sum for damages for breach of contract the sellers contended that they were not liable to pay any damages for breach of contract because the contract had come to an end on the outbreak of war. *Held,* reversing the decision of Chaudhuri, *J.*, that the contract of affreightment which was an integral part of the contract with the buyers became unlawful on the outbreak of war inasmuch as it was a contract with an alien enemy, and under the provisions of s. 56 of the Indian Contract Act the contract with the buyers became impossible of performance. MADHORAM HURDEO DASS *v.* G. C. SETT (1917).

21 C. W. N. 670

——— s. 60—*Appropriation—Decree for principal and interest payable by instalments—Instalment paid, if may be applied first to discharging interest.* Where a certain amount was decreed with interest at a certain rate and the defendant was directed to pay in regularly yearly instalments of a certain amount and he did pay the instalments as they fell due but did not say how the payment was to be appropriated, and the decree-holder claimed that he was at liberty to appropriate out of each payment as it was paid sufficient to satisfy the interest due at the date of payment and to credit the balance only to principal. *Held,* that he was entitled to do so. *Per* RICHARDSON, *J.* (WALMSLEY, *J. dubitante*)—Where both principal and interest are payable under a contract or a decree, in the absence of provision in the contract or decree and of appropriation by the debtor, the creditor has the right to pay himself the interest first. BISWANATH BHATTACHARYA *v.* SOMESHWAR SARMA (1917) . . . **21 C. W. N. 1055**

——— s. 65—

See BROACH AND KAIRA INCUMBERED ESTATES ACT (XXI OF 1881), s. 28.

I. L. R. 41 Bom. 546

——— ss. 69, 70—

1. **———** *Darputnidar of a co-sharer putnidar, depositing decretal amount to prevent sale of the putni in execution of a decree obtained against only some of the putnidars, if a person legally "interested in the payment"—Suit by putnidar not party to the decree for declaration and injunction to restrain darputnidar taking possession under s. 171 of the Bengal Tenancy Act (VIII of 1885)—Power of Court to grant conditional injunction—Condition that plaintiff should pay his share of rent paid by defendant.* The payment made by the *darputnidar*

CONTRACT ACT (IX OF 1872)—*contd.*

——— **ss. 69, 70**—*concld.*

of a share of a *putni* of the whole rent due on the *putni* to save it from being sold in execution of a decree obtained by the landlord in a suit for arrears of rent brought against some only of the *putnidars* comes within ss. 69 and 70 of the Contract Act. Where, after an order under s. 171 of the Bengal Tenancy Act was made in favour of such a *darputnidar*, one of the *putnidars* who was not a party to the landlord's suit for rent sued for a declaration and injunction that his right in the property was not affected thereby and the Court below decreed the suit and granted the injunction but made it conditional on the *putnidar* paying to the *darputnidar* the amount of rent proportionate to his share of the *putni*. *Held*, that the order making the injunction conditional was proper. RAJANI KANTO MONDAL *v.* HAJI LAL MAHOMED (1917).

21 C. W. N. 628

2. ——— "*Lawful payment*", *what is*—"*Interested in paying*", *who are*—*Deposit of decretal amount to prevent rent-sale by person claiming under a forged mortgage-bond*—*Sale set aside*—*Tenant, if liable to repay by reason of* "*benefit*" *received*—*Bengal Tenancy Act* (*VIII of 1885*), *s. 171* (*3*)—"*Interest voidable on sale*". Plaintiff, alleging to be mortgagee of a tenancy which was about to be sold in execution of a rent decree, proceeded to deposit the decretal amount under s. 170, cl. (*3*) of the Bengal Tenancy Act, whereupon the tenant challenged his right to do so on the ground that the alleged mortgage was a forged document. The executing Court accepted the deposit, but without deciding the question of the genuineness of the mortgage. In a suit by the plaintiff to recover the amount paid it was found that the mortgage was not genuine. *Held*, that the plaintiff was not a person having an interest in the tenancy which was voidable on the sale within s. 170, cl. (*3*) of the Bengal Tenancy Act, nor was he interested in the payment of the money within the meaning of s. 69 of the Contract Act, nor was the payment lawful within the meaning of s. 70 of that Act. That the plaintiff was also not entitled to recover on the ground of defendant having benefited by the payment since it is not in every case in which a man has benefited by the money of another that an obligation to repay that money arises; there must be an obligation, express or implied, to repay. PANCHKORE GHOSE *v.* HARIDAS JATI (1916) . . . . **21 C. W. N. 394**

——— **s. 72**—*Coercion*—*Money paid to stifle a pending non-compoundable criminal prosecution*—*Suit to recover, maintainability of.* Money obtained from the plaintiff by the defendant under an agreement to stifle a pending non-compoundable criminal prosecution is money paid under "coercion" within the meaning of s. 72 of the Indian Contract Act, and can be recovered back. The maxim *in pari delicto potior est conditio defendentis* does not apply to such a case. *Willimams* v. *Hedley*, *8 East*, *738*, *Unwin* v. *Leaper*, *1 M. & G. 747*, and *Atkinson* v. *Denby*, *6 H. & N. 778*, followed. *Kanhaya Lal* v. *National Bank of India, Limited*, *I. L. R. 40 Calc. 598*, referred to. The fact that the money was actually paid as the result of an arbitration is immaterial if the plaintiff's consent to the arbitration was obtained by means of the prosecution. MUTHUVEERAPPA CHETTY *v.* RAMASWAMI CHETTY 1915) . . . . **I. L. R. 40 Mad. 285**

CONTRACT ACT (IX OF 1872)—*concld.*

——— **s. 73**—*Contract to sell immovable property belonging to himself and minor members by manager of a joint Hindu family*—*Breach of contract*—*Damages against manager, recoverable*—*English rule on the subject not applicable*—*Transfer of Property Act* (*IV of 1882*), *s. 55* (*2*), *applicability of, to executory contracts. Held* by the Full Bench:—A manager of a joint Hindu family who has agreed to sell immovable proprerty belonging to himself and the minor members of the family is personally liable under s. 73 of the Indian Contract Act (IX of 1872) for damages for failure to perform the contract when it is found that it is not binding on the minors. *Gas Light and Coke Company* v. *Towse*, *35 Ch. D. 519*, not followed. The law in India as laid down by the Indian Contract Act as to the right to damages for breach of contract to sell immovable property is different from that in England. Knowledge of the purchaser of the defect of title in his vendor does not affect his right to recover damages. *Per* ABDUR RAHIM, *J.* (SADASIVA AYYAR, *J.*, *contra*).—S. 55 (*2*) of the Transfer of Property Act is applicable also to cases of executory contracts. ADIKESAVAN NAIDU *v.* GURUNATHA CHETTI (1916).

I. L. R. 40 Mad. 338

——— **s. 81**—

See JUTE . . **I. L. R. 44 Calc. 98**

——— **ss. 108, 178**—

See LIMITATION ACT IX 9 OF 1908), ARTS. 48, 49 . . **I. L. R. 40 Mad. 678**

——— **ss. 126, 128**—

See PRINCIPAL AND SURETY.

I. L. R. 44 Calc. 978

——— **s. 226**—

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), s. 27.

I. L. R. 40 Mad. 1171

CONTRACT OF GUARANTEE.

See PRINCIPAL AND SURETY.

I. L. R. 44 Calc. 978

CONTRACT OF SERVICE.

See SCHOOLMASTER.

I. L. R. 44 Calc. 917

CONTRACT (VOID).

See NORTH-WESTERN PROVINCES RENT ACT. (XII OF 1881) . **I. L. R. 39 All. 645**

CONTRACT WITH ALIEN ENEMY.

——— *Status of hostile firms*—*Common law doctrine*—*Trading licenses granted to hostile firms, their effect*—*Licenses granted to manager of a firm, not ultra vires*—*The Hostile Foreigners' Trading Order of 1914*—*The Indian Councils Act of 1861, s. 23*—*Act I of 1915*—*Interest made payable under contracts entered into before war*—*Suspension of interest after war*—*American cases, though not authoritative, noted on a novel point.* The existence of a state of war between the respective countries of the debtor and the creditor suspends the accrual of interest when it would ordinarily be recoverable as damages, and not as a substantive part of the debt, the reason being that a party should not be called upon to pay damages for retaining money which it was his duty to withhold. The accrual of interest is equally suspended, even when the alien

CONTRACT WITH ALIEN ENEMY—*concld.*
enemy creditor remains in the country of the debtor, until the debtor has actual notice that the principal can safely be paid without the possibility of its enuring for the benefit of the enemy during the continuance of hostilities. PADGETT *v.* JAMSHETJI HORMUSJI (1916) . . **I. L. R. 41 Bom. 390**

CONTRIBUTION.

See MORTGAGE—EXONERATION.
I. L. R. 40 Mad. 968

See SALE FOR ARREARS OF REVENUE.
I. L. R. 44 Calc. 573

CONTROL.

——— **inability of—**

See SURETY . **I. L. R. 44 Calc. 737**

CONVENIENCE AND EXPEDIENCY.

——— **questions of—**

See JURISDICTION OF HIGH COURT.
I. L. R. 44 Calc. 595

CONVERSATION.

——— **between pleaders—**

See EVIDENCE . **I. L. R. 44 Calc. 130**

CONVEYANCE.

See EVIDENCE . **L. R. 44 I. A. 236**

CONVICTION.

See SEPARATE CONVICTIONS.
I. L. R. 39 All. 623

CO-OWNERS.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 44 Calc. 573

CO-SHARERS.

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), s. 118.
I. L. R. 39 All. 707

COSTS.

——— *Discretion as to costs—Appeal against order for costs—Trustees, when entitled to costs of legal proceedings out of estate.* Although costs of a suit are discretionary with the Judge the Court of Appeal will interfere with the discretion of the Court of first instance where it is found that that discretion was not exercised on correct principles. Persons who are in the position of trustees ought to have their costs out of the trust estate when a question of legal proceedings is concerned unless they have unreasonably carried on or resisted such proceedings. The Court of first instance having come to the conclusion that the *mutwallis* were really trustees ought to have applied this principle in making order as to costs. Where disputes had arisen between the *mutwallis* of a *wakf* estate and the trustees supervising their management and by mutual consent the matter was referred by Court to the Assistant Referee of the Court for report and upon the report being made the *mutwallis* took exceptions to the report which were rejected by Court and the report was confirmed and the Court allowed only one set of costs to the trustees out of the estate and none to the *mutwallis*. *Held*, on appeal, that the *mutwallis* were entitled to get the costs of the reference out of the estate, but not the costs of the proceedings resulting from their taking exceptions as the exceptions were rightly rejected by the Court of first instance as unreasonable. As the *mutwallis* succeeded in their appeal to a material extent, they, as well as the respondent trustees, were allowed

COSTS—*concld.*
costs out of the estate. AGA MD. SHERAZI *v.* SYED ALI MD. SHOOSTRY (1916) . **21 C. W. N. 339**

COSTS OF WIFE.

See DIVORCE . **I. L. R. 44 Calc. 35**

COUNSEL.

——— **duties of—**

See BARRISTER . **I. L. R. 44 Calc. 741**

See EX-PARTE CASE.
I. L. R. 44 Calc. 573

COUNTERFEIT COIN.

——— *Possession—Custody—"To become possessed", whether "conscious possession"—Possession with knowledge—Penal Code (Act XLV of 1860), ss. 7, 27, 243—Misdirection—Review—Powers of High Court—Letters Patent, 1865, cl. 26—Criminal Procedure Code (Act V of 1898), s. 537. Per* CURIAM. To constitute an offence under s. 243 of the Penal Code it is essential to prove that at the time the accused became possessed of the coin he knew it to be counterfeit, whether he was in possession of the coin himself, or his wife, clerk, or servant was in possession of the coin on his account. As there was a misdirection to the Jury in a part of the Judge's summing up which related to a material and essential element of the charge the conviction should be set aside in review under cl. 26 of the Letters Patent. *Per* MOOKERJEE, *J.* The term "possession" has to be interpreted in the light of s. 27, Indian Penal Code, which by virtue of s. 7 is applicable wherever the term is used in the Code. S. 27 abolishes the distinction recognized in English law between possession and custody. S. 537 of the Criminal Procedure Code has no application to a case reviewed under cl. 26 of the Letters Patent. Mere non-direction is not necessarily misdirection. *Rex* v. *Stoddart, 2 Cr. App. Rep. 217*, followed. The Judge's note of his charge to Jury is conclusive. *King-Emperor* v. *Upendra Nath Das, 21 C. L. J. 377 ; 19 C. W. N. 653*, referred to. *Per* FLETCHER, *J.* The point of time to be considered was the time when the accused had actual or conscious possession of the counterfeit coins for determining whether he had knowledge at the time that the coins were spurious. *Per* CHAUDHURI, *J.* There is a clear distinction in law between "custody" and "possession". Custody means possession on account of another. S. 27, Indian Penal Code, does not express the complete thought of the legislature on the question of possession, and it is competent to the Court to interpret the words "to become possessed" in accordance with the meaning that the general law has given to them. *In re Proceedings, 22nd December, 1866, 3 Mad. H. C. R. App.* xi, referred to. EMPEROR *v.* FATEH CHAND AGARWALLA (1916) . **I. L. R. 44 Calc. 477**

COURT.

——— **power of—**

See INTEREST . **I. L. R. 44 Calc. 162**

COURT-FEE.

See APPEAL IN FORMA PAUPERIS.
I. L. R. 40 Mad. 687

See CIVIL PROCEDURE CODE, S. 115.
I. L. R. 39 All. 723

1. ——— *Suit for declaration that entry in record-of-rights a nullity, whether one for*

COURT-FEE—*concld.*

consequential relief—Specific Relief Act (I of 1877), Ch. VI, s. 42 Bengal Tenancy Act (VIII of 1885) s. 111A—Amendment or rejection of plaint—Civil Procedure Code (Act V of 1908), O. VII, r. 11—Court-fees Act (VII of 1870), Sch. II, Art. 17, cl. (iii), s. 7 (iv), cl. (c). Where a court-fee of rupees ten was paid in a suit purporting to be under s. 111A of the Bengal Tenancy Act, but the plaintiffs prayed for a declaration (*a*) that they were occupancy ryots, and (*b*) also that the entry in the record-of-rights showing them as tenure-holders was a nullity; and the plaintiffs on being required to supply the deficit court-fee on the second relief claimed failed to do so within the time fixed by the Court. *Held,* (i) that the second prayer being for a consequential relief was not such a declaration as was comtemplated by the proviso to s. 111A; (ii) that the learned Judge had no alternative but to reject the plaint; and (iii) that the plaintiffs could not be allowed to amend the plaint by striking out the second prayer for relief as the provision of O. VII, r. 11 of the Civil Procedure Code was mandatory. MIDNAPUR ZEMINDARY COMPANY, LTD., *v.* SECRETARY OF TATEFOR INDIA (1916) . **I. L. R. 44 Calc. 352**

2. ——— *Court-fee on memorandum of appeal—Appeal from Order under s. 144 of the Civil Procedure Code (Act V of 1908)—Order, if comes under s. 47 (i) of the Code—Government Notification prescribing Court-fee of Rs. 2.* An order under s. 144 of the Civil Procedure Code comes under s. 47 (*1*) of the Code. Cl. (*6*) of the notification of the Government of India, No. 4650, dated 10th September, 1889, applies to appeals from such orders, and a Court-fee of Rs. 2 is chargeable on such appeals. MADAN MOHAN DE *v.* NOGENDRA NATH DE (1917).

21 C. W. N. 544

3. ——— *Suit for redemption of mortgage—Preliminary decree passed in two parts—Appeal.* The Court of first instance in a suit for redemption of a mortgage passed in effect two preliminary decrees. It first passed a decree declaring the plaintiffs' right to redeem, which was denied by the defendants, against which the defendants filed an appeal, and then, whilst the appeal was pending, a second preliminary decree deciding the amount for which redemption might take place. Against that decree also the defendants appealed. *Held,* that the two appeals were not to be regarded as separate appeals for the purpose of assessing the Court-fee, but should be counted as one. LALTA PRASAD *v.* SHEORAJ SINGH (1917).

I. L. R. 39 All. 452

COURT-FEES ACT (VII OF 1870).

——— **s. 7 (iv) (f), 11; Sch. II, Art. 17 (vi)—**

See ADMINISTRATION SUIT.

I. L. R. 44 Calc. 890

——— **s. 7, cl. (v) (*b*) and (*e*)**—*Assessed land—Cocoanut trees thereon—Suit for land and trees—Valuation of suit—Garden, meaning of.* In a suit to recover possession of assessed land on which cocoanut trees stand the valuation should be under s. 7, cl. (*v*) (*b*), and not under cl. (*v*) (*e*) of the Court-fees Act (VII of 1870). The word 'garden' in section 7, clause (*v*) (*e*) of the Court-fees Act (VII of 1870) should be taken as referring primarily to a garden in the English sense, that is, an ornamental or pleasure or vegetable garden attached to a house. *Andothodan Moidin* v. *Pullambath Mamally, I. L. R. 12 Mad. 301,* referred to. The conversion of an assessed arable field into a cocoanut tope does not affect the application of cl. (*v*) (*b*) of s. 7 of the Court-fees Act. *Venkayya* v. *Ramaswami, I. L. R. 22 Mad. 39* and *Murugesa Chetti* v. *Chinnathambi Goundan, I. L. R. 24 Mad. 421,* referred to. KULLAPA GAUNDAN *v.* ABDUL RAHIM (1916) . . **I. L. R. 40 Mad. 824**

——— **Sch. II, Art. 6**—*Stay of execution security bond for, how stamped—Court-fee or non-judicial stamp—Indian Stamp Act (II of 1899), Sch. I, Art. 15.* Bonds given as security in pursuance of the order of the Court for stay of execution must be written on paper properly stamped under the Indian Stamp Act (II of 1899). Such bonds cannot be written on plain paper bearing a Court-fee stamp of annas 8 only, as they are not made by order of the Court within the meaning of Art. 6 of Sch. II of the Court-fees Act. DWARKA NATH DEY *v.* SAILAJA KANTA MULLICK (1916).

21 C. W. N. 1150

——— **Sch. II, Art. 17 (iii), s. 7 (iv) cl. (*c*)—**

See COURT-FEE . **I. L. R. 44 Calc. 352**

——— **Sch. II, Art. 17 (iii)**—*Declaratory decree—Suit to have declared declaratory decree not binding on ground of fraud—Consequential relief—Court-fee, amount of.* A suit by the plaintiff to have it declared that a decree passed in a previous suit declaring that certain alienations were not valid was not binding on her is properly instituted on a Court-fee stamp of Rs. 10 only because no consequential relief is needed or sought for in it. BAGALA SUNDARI DEBI *v.* PROSANNA NATH MUKHERJI (1916) . . . **21 C. W. N. 375**

COURT OF WARDS.

See COMPROMISE.

I. L. R. 44 Calc. 829

——— **alienation by—**

See HINDU LAW—ADOPTION.

I. L. R. 40 Mad. 846

——— **management of widow's estate by—**

See HINDU LAW—ADOPTION.

I. L. R. 40 Mad. 846

COURT OF WARDS ACT (BENG. IX OF 1879).

——— **ss. 18, 51—**

See COMPROMISE.

I. L. R. 44 Calc. 829

COURT OF WARDS ACT (MAD. I OF 1902).

——— **s. 35—**

See HINDU LAW—REVERSIONERS.

I. L. R. 40 Mad. 871

COURT-SALE.

See COMPANIES ACT (VII OF 1913), S. 38

I. L. R. 41 Bom. 76

See MORTGAGOR AND MORTGAGEE.

I. L. R. 41 Bom. 357

CREDITOR.

See ADMINISTRATION SUIT.

I. L. R. 44 Calc. 890

CREDITOR—*concld.*

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 43 (*2*), 46.
I. L. R. 39 All. 171

CRIMINAL APPEAL.

See PRIVY COUNCIL, PRACTICE OF.
I. L. R. 44 Calc. 876

CRIMINAL BREACH OF TRUST.

See JURISDICTION.
I. L. R. 44 Calc. 912

CRIMINAL MISAPPROPRIATION.

See JURISDICTION.
I. L. R. 44 Calc. 912

CRIMINAL PROCEDURE CODE (ACT V OF 1898).

——— **s. 35**—*Scope of—Section, if covers cases when different kinds of sentences are passed.* S. 35 of the Code of Criminal Procedure is not restricted to cases where the several punishments are all of the same kind, that is, are all sentences of imprisonment or all sentences of transportation, but covers cases where both kinds of punishment are inflicted. KHOHUA MORAN *v.* KING-EMPEROR (1916) . . . . . **21 C. W. N. 608**

——— **ss. 35, 235**—

See PENAL CODE ACT (XLV OF 1860), SS. 71, 147, 323.
I. L. R. 39 All. 623

——— **s. 49**—

See HABEAS CORPUS.
I. L. R. 44 Calc. 459

——— **s. 54**—*Penal Code (Act XLV of 1860), ss. 225, 332—Cognizable offence—Issue of warrant of arrest—Arrest by a police officer without warrant—Legality of arrest—Obstruction of such officer by third parties, if an offence.* A police officer is justified in making an arrest under s. 54 of the Criminal Procedure Code of a person against whom a charge of having committed a cognizable offence has been preferred although the warrant issued for the purpose had not been entrusted to him; and a person obstructing and beating such officer while he is attempting to arrest the offender is guilty of offences under ss. 225, 332 of the Indian Penal Code. *In the matter of Charu Ch. Majumdar, 20 C. W. N. 1233,* distinguished. RATNA MUDALI *v.* KING-EMPEROR (1917).
I. L. R. 40 Mad. 1028

——— **ss. 54, 190, 491, 498**—

See HABEAS CORPUS.
I. L. R. 44 Calc. 76

——— **s. 110**—*Security for good behaviour—Jurisdiction—"Residence" of person proceeded against not material.* In order to give jurisdiction to a Magistrate to proceed under s. 110 of the Code of Criminal Procedure it is not necessary that the person proceeded against should be "residing" within the local limits of his jurisdiction. The meaning of the expression 'any person within the local limits' in s. 110 is 'any person who is within the local limits at the time the Magistrate takes action under the section'. *In re K. Rangan, I. L. R. 36 Mad. 96,* followed. *Ketaboi* v. *Queen-Empress, I. L. R. 27 Calc. 993,* dissented from. EMPEROR *v.* MUNNA (1916).
I. L. R. 39 All. 139

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 122**—

See SURETY . **I. L. R. 44 Calc. 737**

——— **s. 125**—*Security to keep the peace—Application to cancel order for security—Appeal—Revision.* An application made to the District Magistrate to cancel an order for security to keep the peace under s. 125 of the Code of Criminal Procedure cannot be regarded in the same light as an appeal and the Magistrate's order thereon would not be vitiated by the fact alone that the applicant had not been heard. *Semble:* that on an application for revision of an order for security to keep the peace the High Court should not refuse to interfere *solely* on the ground that the applicant has not first applied to the District Magistrate under s. 125. EMPEROR *v.* SITA RAM (1917).
I. L. R. 39 All. 466

——— **ss. 133, 136, 137**—

See PUBLIC PATHWAY.
I. L. R. 44 Calc. 61

——— **ss. 133, 137**—*Order without any evidence—Determination of bona fides of claim absolutely necessary.* Where cause is shown against a conditional order under s. 133, Criminal Procedure Code, an order absolute made without any evidence and without a determination of the *bona fides* of the claim set up is illegal. RAM MONDAL *v.* CHANDRA MONDAL (1916) . . . **21 C. W. N. 926**

——— **s. 145**—

1. ——— *Order without recording oral evidence on either side.* Where a Magistrate made an order under s. 145, Criminal Procedure Code, without giving either party an opportunity of adducing oral evidence as to possession. *Held,* that the order was liable to be set aside. SAKHAYUR ALI *v.* ALHADI HAZI (1917).
21 C. W. N. 928

2. ——— *Proceedings, if can be had after order under s. 107, Criminal Procedure Code.—Jurisdiction.* There would be no want of jurisdiction on the part of a Magistrate to continue proceedings under s. 145, Criminal Procedure Code, after having made an order under s. 107, Criminal Procedure Code. NASIRUDDIN SARKAR *v.* GOFURUDDIN MAHAMED (1916).
21 C. W. N. 160

3. ——— *Government of India Act, 1915, s. 107—Order under s. 145 by a Magistrate duly empowered to act under Chapter XII—Revision—Jurisdiction of High Court.* Where proceedings are in intention, in form, and in fact proceedings under Chapter XII of the Code of Criminal Procedure, and are taken by a Magistrate duly empowered to act under that chapter, the High Court has no power to send for the record of those proceedings either under the Code of Criminal Procedure or under the Government of India Act, 1915. There is no practical difference between s. 107 of the Government of India Act, 1915, and s. 15 of the Charter Act. *Jhingai Singh* v. *Ram Partab, I. L. R. 31 All. 150, Maharaj Tewari* v. *Har Charan Rai, I. L. R. 26 All. 144, Sayeda Khatun* v. *Dal Singh, I. L. R. 36 All. 233, Babban Singh* v. *Baldeo Singh, 4 All. L. J. 91, Har Prasad* v. *Pandurang, All. W. N.,* 1905, p. 260, *Baldeo Baksh Singh* v. *Raj Ballan Singh, 2 All. L. J.* 274, and *Muhammad Suleman Khan* v. *Faitma, I. L. R. 9 All. 104,* referred to. *Nathu Ram* v.

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 145—*concld.*

Emperor through Puran Mal, *15 All. L. J. 270*, and *in re Mathu Mal, I. L. R. 24 All. 315*, distinguished. *Parmeshwar Singh* v. *Kailaspati, 1 Patna L. J. 336*, dissented from. MATUKDHARI SINGH *v.* JAISRI (1917) . . . . **I. L. R. 39 All. 612**

——— s. 146—*Section when to be applied—Order made in disregard of decision under s. 41 of Survey Act (V of 1875) B. S. and entry in record-of-rights—Rejection of material evidence on erroneous grounds—Order made without jurisdiction or after gross and material irregularities prejudicing party.* Where in a proceeding under s. 145, Criminal Procedure Code, the trying Magistrate, without giving effect to an order made under s. 41 of the Survey Act and the entry in the record-of-rights in accordance with the order regarding the disputed land which remained fallow up to the time when the present dispute arose, attached it under s. 146, Criminal Procedure Code: *Held*, that an order under s. 146, Criminal Procedure Code, can be made only when the Magistrate is unable to satisfy himself as to which of the contending parties is in possession and the trying Magistrate when he proceeded to determine the question of possession which arose between the parties should in the first instance have presumed that the possession of this fallow land was with the owners who had title as determined by the decision under s. 41 of the Survey Act which had the force of an order of the Civil Court and which title was further to be presumed from the entry in the record-of-rights. That the Magistrate not having done that, and discarded and rejected on erroneous grounds practically every piece of evidence that might have led him to a correct conclusion, made his final order either without jurisdiction or after such gross and material irregularities as seriously to prejudice the second party. PRAFULLA NATH TAGORE *v.* J. HUDDING (1917) . . **21 C. W. N. 1059**

——— s. 147—*Dispute about right to collect tolas from hât, if comes within the section.* A dispute relating to a right to collect *tolas* from a *hât* is a dispute concerning the right of use of land within the meaning of s. 147, Criminal Procedure Code. The words "concerning the right of use of any land or water" in s. 147, Criminal Procedure Code, which have been substituted in the present Code in place of the words "the right to do anything" in or upon tangible immovable property" in the corresponding section of the Code of 1882 are of wider and more general application than the words "concerning land or water" in s. 145, Criminal Procedure Code. SARAT CHANDRA MADAK *v* MABARAK MULLICK (1916).

21 C. W. N. 439

——— ss. 172, 374—

See PRIVY COUNCIL, PRACTICE OF.

I. L. R. 44 Calc. 876

——— ss. 179, 181 (*2*)—

See JURISDICTION.

I. L. R. 44 Calc. 912

——— s. 185—

1. ——— *Doubt as to Court having jurisdiction to try a case, decision of High Court in case of.* In a case under s. 408, Indian Penal Code, instituted in the Court of one of the Presidency Magistrates of Calcutta, it being doubtful whether the Courts in Calcutta or in the District of 24-Parganas had jurisdiction, the High Court in exercise of its jurisdiction under s. 185 of the Code of Criminal Procedure decided that the case should be inquired into and tried by the Court within the District of 24-Parganas. BENODE BEHARY MAL *v.* GANESH CHANDRA MISTRI (1916).

21 C. W. N. 434

2. ——— *Transfer of case—Case pending in a Court outside the jurisdiction of High Court—Power of High Court to transfer to a Court within its jurisdiction or to decide by which Court such case shall be tried.* S. 185 of the Criminal Procedure Code (Act V of 1898) does not empower a High Court to transfer to a Court subordinate to its own jurisdiction a case pending in a Court subordinate to the jurisdiction of another High Court, nor does it empower a High Court to decide by which Court such a case shall be tried. RAHMAN SAHIB *v.* VELLABJI (1916).

I. L. R. 40 Mad. 835

——— ss. 185, 527—

See JURISDICTION OF HIGH COURT.

I. L. R. 44 Calc. 595

——— s. 188—*Offence committed on high seas—Native Indian subject of His Majesty—Jurisdiction of British Magistrate to try accused without sanction of Government.* The accused pulled up certain fishing stakes which the complainant had planted in the sea at a distance of five or six miles beyond the low-water mark. They awere convicted by a Magistrate for offences punishable under ss. 426, 143 of the Indian Penal Code (Act XLV of 1860). On appeal, it was contended that the Magistrate had no jurisdiction to try the case without the sanction of the Local Government under s. 188 of the Criminal Procedure Code (Act V of 1898) for the offences, if any, were committed on the high seas. *Held*, overruling the contention, that the Magistrate had jurisdiction to try the case, inasmuch as the first proviso to s. 188 of the Criminal Procedure Code, 1898, was limited to territorial jurisdiction and had no bearing upon the question of jurisdiction to try an offence committed on the high seas. EMPEROR *v.* MANUEL PHILIP (1917) . . . . **I. L. R. 41 Bom. 667**

——— s. 195—

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 970

1. ——— *Sanction to prosecute—Appeal—Letters Patent, s. 10. Held*, that an order made by a single Judge of the High Court granting sanction for a prosecution under s. 195 of the Code of Criminal Procedure is not a "judgment" within the purview of s. 10 of the Letters Patent and is not appealable under that section. Neither can such an order be called in question under sub-s. (*6*) of s. 195 of the Code of Criminal Procedure, inasmuch as a Judge of the High Court sitting singly is not subordinate to a Division Bench of the Court. *Hurrish Chunder Chowdhry* v. *Kalisunderi Debi, I. L. R. 9 Calc. 482*, referred to. RAMJAS *v.* MAHADEO PRASAD (1916).

I. L. R. 39 All. 147

2. ——— *Sanction to prosecute—Sanction granted by a Court of Small Causes—Application to revoke sanction—Jurisdiction—*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 195**—*contd.*

District Judge. When an order granting or refusing sanction to prosecute is made by a Court of Small Causes under s. 195 of the Code of Criminal Procedure, the Court to which an application for the reversal of such order lies is the Court of the District Judge. *Sundar Lal* v. *King-Emperor, 6 All. L. J.*, 796, *Wazir Muhammad* v. *Hub Lal, I. L. R. 31 All. 313, In re Ram Prasad Malla, I. L. R. 37 Calc. 13*, and *Budhu Lal* v. *Chhatu Gope, I. L. R. 43 Calc. 597*, referred to. *Ajudhia Prasad* v. *Ram Lal, I. L. R. 34 All. 197*, distinguished., *Ambika Tewari* v. *King-Emperor, 1 Patna L. J. 206*, and *Sukhdeo Singh* v. *The District Magistrate of Muzaffarpur, 2 Patna L. J. 1*, dissented from. CHIDDA LAL *v.* BHAJAN LAL (1917).

I. L. R. 39 All. 657

3. ——— On the hearing of an application to the High Court against the order of the Presidency Small Cause Court refusing sanction to prosecute, a vakil has right of audience before Bench appointed by the Chief Justice to dispose of it. BUDHU LAL *v.* CHATTU GOPE (1917).

21 C. W. N. 654

4. ——— *Prosecution of witness pending disposal of suit in which he deposed, propriety of sanctioning—Cl. (7)—Revocation of sanction granted by Subordinate Judge if to be applied for before District Judge or High Court.* In a suit brought by a lady relating to a certain business which she claimed as the exclusive property of her husband, the petitioner, who was her brother and Ammukhtear entrusted with the conduct of the suit, filed an affidavit about entries in the books of the business showing the defendant's status therein. While the suit was still pending, on the application of the defendant, the Subordinate Judge granted sanction for the prosecution of the petitioner in respect of the statement in the affidavit. The petitioner moved the High Court. *Held*, that generally speaking it is not desirable that witnesses should be prosecuted while the case in which they have deposed or are about to depose, is still pending and in the circumstances of the present case (the plaintiff being dependent on the petitioner for the prosecution of her case) the order made was all the more improper. Without deciding whether an application for revocation of sanction granted by a Subordinate Judge should be made to the District Judge as being the Court to which appeals ordinarily lie from the former Court, the High Court set aside the order in the present case. RAJ KUMAR DEOTY *v.* SATISH CHANDRA GHOSH (1917) . . . . **21 C. W. N. 753**

——— **s. 195** (*1*) (b)—

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 650

——— **s. 195** (*1*) (c)—

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 1002

——— **s. 195** (*6*)—

See APPEAL, RIGHT OF.

I. L. R. 44 Calc. 804

——— **s. 195, sub-s.** (*6*)—*Sanction to prosecute for the offence of giving false evidence—Prosecution stayed at the instance of the party to be proceeded against, pending the disposal of the appeal by the Appellate Court—Expiry of six months' time—Power of the High Court to extend time nunc pro tunc.* Under s. 195, cl. (*6*) of the Criminal Procedure Code of 1898, the High Court has the power to extend the time of a sanction to prosecute, even after the expiry of the original period of six months from its date. *Karuppana Servagaran* v. *Sinna Gounden, I. L. R. 26 Mad. 480*, followed. *Kali Kinkar Sett* v. *Dinobandhu Nandy, I. L. R. 32 Calc. 379*, dissented from. KRISHNA KERRING & Co. *v.* MILLER (1916) . **I. L. R. 41 Bom. 631**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 195**—*concld.*

——— **ss. 195** (*6*), (*7*) (c), **435, 439**—

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 816

——— **s. 195 cl.** (*7*) (c)—*Provincial Small Cause Court, sanction to prosecute granted by—appeal to District Judge, if lies.* A Provincial Small Cause Court is under sub-cl. (c) of cl. (*7*) of s. 195, Criminal Procedure Code, to be deemed to be subordinate for the purposes of that section to the Court of the District Judge. NIBARAN CHANDRA CHAKRAVARTI *v.* AKSHOY KUMAR BANERJI (1917).

21 C. W. N. 948

——— **s. 202**—*Magistrate's duty to record reasons before directing local investigation—Accused, if should be allowed to be represented when Magistrate considers the report of the local investigation.* It is most desirable that Magistrates should follow the procedure which is quite clearly laid down in Chap. XVI dealing with complaints to Magistrates. Under s. 202, if the Magistrate on examining the complainant, distrusts the statement of the complainant, he must record his reasons before directing a local investigation. It is irregular and quite inconsistent with the scheme of the Code of Criminal Procedure to allow the accused to be represented by a lawyer to argue the case for the defence when the Magistrate is considering under s. 202, Criminal Procedure Code, the report of the local investigation ordered by him. BALAI LAL MUKHERJI *v.* PASUPATI CHATTERJI (1916).

21 C. W. N. 127

——— **ss. 233, 535**—*Charges, misjoinder of.* The four petitioners were convicted under s. 193, Indian Penal Code, for fabricating two *kabuliyats* executed on the same day, one by two of them and the other by the two others, the two sets of executants not having any community of interest *Held*, that there was a misjoinder of charges SOFIUDDIN KAJI *v.* FAJEL SHAIK (1917).

21 C. W. N. 756

——— **s. 234**—*Joint trial—Same transaction.* The petitioner was jointly tried and convicted under s. 411, Indian Penal Code, along with another person who was either the thief or who as first receiver having obtained a certain amount of the booty subsequently handed over a portion of it to the petitioner. *Held*, that the first receipt or retention by the co-accused and the act by which he handed over a portion of the stolen property to the petitioner did not form part of the same transaction. The High Court set aside the conviction and directed a retrial by a Magistrate other than the trying Magistrate. RAMRATAN SUKUL *v.* EMPEROR (1917) . **21 C. W. N. 1111**

——— **s. 238**—

See LURKING HOUSE-TRESPASS.

I. L. R. 44 Calc. 358

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **ss. 247, 403 and 494**—*Order of acquittal under s. 494, whether final bar to further proceedings—Autrefois acquit.* In a summons case, the Public Prosecutor withdrew from the prosecution before the accused had been served and the accused was acquitted under s. 494, Criminal Procedure Code. On a difference of opinion between ABDUR RAHIM and NAPIER, *JJ.*, as to whether the accused could be said to have been tried as well as acquitted within the meaning of s. 403, so as to bar further proceedings. *Held* by Sir JOHN WALLIS, *C.J.*, under s. 429, that the rule of English law requiring the accused to have been tried as well as acquitted in order to bar further proceedings which is embodied in s. 494 of the present Code (s. 61 of the Code of 1872), is inapplicable to the statutory acquittals subsequently introduced into the Code, *i.e.*, the sections now numbered 494, 247 and 345 which are intended to bar further proceedings whether the accused can be said to have been tried or not. Cases governed by s. 429, Criminal Procedure Code, cannot be referred to a Full Bench. *Re Kotayya, I. L. R. 40 Mad. 977* (footnote), dissented from. *Re* DUDEKULA LAL SAHIB (1917) . . **I. L. R. 40 Mad. 976**

——— **s. 276**—*Civil Procedure Code (1908), s. 70—Prosecution ordered by a Revenue Officer in charge of a sale of immovable property in respect of statements made to him in that capacity—Revision—Jurisdiction. Held,* that a gazetted subordinate to whom the Collector had delegated his powers and who had before him proceedings for sale of immovable ancestral property was a Revenue Court acting in pursuance of the powers conferred by s. 70 of the Civil Procedure Code and that the High Court had no jurisdiction to revise an order passed by such officer in the course of those proceedings under s. 476 of the Code of Criminal Procedure. *Emperor* v. *Bhajan Tewari, I. L. R. 37 All. 334,* distinguished. *In the matter of the petition of Bhup Kunwar, I. L. R. 26 All. 249,* and *Emperor* v. *Muhammad Khan, All. W. N.*, 1902, page 202, referred to. EMPEROR *v.* ASHARFI LAL (1916).

I. L. R. 39 All. 91

——— **s. 307**—*Reference to High Court on disagreement between Judge and Jury—Acceptance by Judge of verdict on some charges reference to High Court on others—High Court if can consider evidence on charges in relation to which verdict accepted by trial Judge—Course to be followed by High Court on such reference in testing verdict referred.* Where the accused was tried on several charges and the Sessions Judge accepted the verdict of the jury as to some and disagreed as to others and referred the verdict to the High Court as to the latter. *Held,* that by this limited form of reference the High Court was precluded from considering the entire evidence on the record and on such reference all that the High Court had to decide was whether the verdict of the jury on the charges as to which there was disagreement between the Judge and the jury was a reasonable verdict which a body of reasonable men could arrive at having regard to the evidence bearing on these charges. That the Sessions Judge if he considered that the interests of justice required a reference to the High Court should have referred the whole case leaving it to the High Court to consider the whole of the evidence that was placed before the jury. KING-EMPEROR *v.* ANNADA CHARAN ROY (1916).

21 C. W. N. 435

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 339**—*Withdrawal of pardon—Procedure.* Where an accomplice who has accepted a tender of pardon made under s. 337 of the Code of Criminal Procedure fails to make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence under inquiry, there is no necessity to record any formal order withdrawing the pardon. If the accomplice has forfeited his pardon and is put on his trial for the offence in respect of which the pardon was tendered, it is open to him to plead his pardon in bar of trial, and it will then be for the prosecution to show in what manner the pardon has been forfeited. *Kullan* v. *Emperor, I. L. R. 32 Mad. 173,* followed. EMPEROR *v.* KHIALI (1917).

I. L. R. 39 All. 305

——— **s. 344**—*Case taken upon police charge-sheet—Informant represented by vakil—Absence of vakil Application by informant for adjournment—Adjournment conditional on payment of costs by informant—Validity of order.* Where a case was taken up by a Magistrate on a police charge-sheet filed on information furnished by a person who retained a vakil to represent him at the trial and joined in an application for adjournment made by the police officer on the ground of the vakil's absence: *Held,* that it was competent to the Magistrate under s. 344 of the Code of Criminal Procedure to grant an adjournment conditional on the payments of costs by such person, although he was not a complainant under s. 200 of the Code. *Mathura Prasad* v. *Basant Lal, I. L. R. 28 All. 207, Sew Prasad Poddar* v. *The Corporation of Calcutta, 9 C. W. N. 18,* and *Muthusami Iyer* v. *Ramanathan Chettiar,* Criminal Revision Cases Nos. 485 and 486 of 1916, followed. SUNNASI KUDUMBAN v. SIVASUBRAMANIA KONE (1917) . . . **I. L. R. 40 Mad. 1130**

——— **s. 350**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 367.

I. L. R. 40 Mad. 108

——— **s. 364**—*Statement made by accused person—Refusal of accused to sign record—Indian Penal Code s. 180.* When the statement of an accused person has been recorded under the provisions of s. 364 of the Code of Criminal Procedure and admitted by the accused to be correct, the accused is bound to sign the record of such statement, and his refusal to sign it amounts to an offence within the meaning of s. 180 of the Indian Penal Code. *Imperatrix* v. *Sirsapa, I. L. R. 4 Bom. 15,* distinguished. EMPEROR *v.* UMAR KHAN (1917) . . . . **I. L. R. 39 All. 399**

——— **s. 367**—*Transfer of a Magistrate who has written but not delivered judgment—Demand for a new trial before successor under s. 350 of Criminal Procedure Code—Legality of order granting new trial—Successor not bound to pronounce his predecessor's judgment.* A Magistrate who had tried a case wrote a judgement, dated and signed it on the day fixed for judgment. Owing to the absence of one of the accused he did not pronounce it on that day, but adjourned the case to a later date. In the meanwhile the Magistrate was transferred to another station and succeeded by another Magistrate, before whom all the accused demanded on the adjourned date a *de novo* trial. On a reference under s. 438, Criminal Procedure Code, *Held,*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 367**—*concld.*

that the action of the new Magistrate in according a *de novo* trial under s. 350, Criminal Procedure Code, was not illegal and that he was not bound to deliver his predecessor's written judgment. *Obiter*: In the absence of a demand for a new trial it would be in the discretion of the successor to date, sign and pronounce his predecessor's judgment. *Quaere*: Whether it is legal for him to pronounce his predecessor's judgment in the face of a demand for a new trial. *In re Sankara Pillai, 18 Mad. L. J. 197*, considered. *Re* SAVARIMUTHU PILLAI (1916) . . . . **I. L. R. 40 Mad. 108**

——— **ss. 367, 418, 423**—*Trial by Jury—Charge to Jury—Record of heads of charge—Misdirection—Appeal—Powers of Appellate Court.* Nine persons were tried by a jury on a charge of dacoity, the case for the prosecution being that the dacoity charged was committed by these nine persons together with the approver. The jury, however, found a verdict of not guilty in favour of seven out of the nine accused. *Held*, that no conviction for dacoity, which implies the participation of five or more persons, could be had against the remaining accused. *The King* v. *Plummer*, *[1902] 2 K. B. 339*, referred to. In a trial by Jury before a Session Court the record of the Judge's charge to the Jury ought to show in what manner the law applicable to the case has been explained to the Jury: the mere statement that the law was explained is not sufficient. It ought also to show that the evidence relied upon by the defence was properly put before the jury. *Emperor* v. *Baij Nath, All. W. N., 1903, p. 232*, followed. In appeal from the verdict of a jury it is not open to the Appellate Court to substitute its own finding for that of the Jury, and to convict the accused of the offence of which the jury have acquitted them or of some cognate offence substantiated by the evidence which was before the jury, and in this respect an appeal under s. 418 of the Code of Criminal Procedure must be distinguished from a reference under s. 307, *Wafadar Khan* v. *Queen Empress, I. L. R. 21 Calc. 955*, referred to. EMPEROR *v.* IKRAM-UD-DIN (1917) . . . **I. L. R. 39 All. 348**

——— **ss. 367, 424**—*Judgment in appeal.* Where the reason for upholding a conviction in a judgment in appeal was that the evidence for the prosecution was slightly stronger and the story as regards probability was far more likely: *Held*, that this was not sufficient for a conviction in a criminal case. KABBAT ALI *v.* KING-EMPEROR (1916) . . . . . **21 C. W. N. 550**

——— **ss. 369, 488**—*Final order in proceedings for maintenance of wife or child, if can be reviewed by Magistrate.* Proceedings under s. 488, Criminal Procedure Code, are judicial proceedings and the final order or the reasons given for the final order in any such proceeding is in effect a judgment and the principle enunciated in s. 369, Criminal Procedure Code, applies to judgments passed in proceedings under s. 488, Criminal Procedure Code, and a Magistrate has no power to review a final order passed in such a proceeding. NANDA NARAIN NEWAR *v.* MANMAYA KAMINI (1916). **21 C. W. N. 344**

——— **s. 386**—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 69 . **I. L. R. 40 Mad. 767**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*cor td.*

——— **s. 408**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 413.
I. L. R. 40 Mad. 591

——— **s. 413**—

1. ——— *Appeal—One of two co-accused given a non-appealable, the other an appealable, sentence—Indian Registration Act (XVI of 1908), s. 83—"Permission"—Criminal Procedure Code, s. 403—Previous convictions. Held*, that a person who has received a non-appealable sentence does not derive any right of appeal from the fact that a co-accused tried jointly with him has received a sentence which is appealable. *Emperor* v. *Lal Singh, I. L. R. 38 All. 395*, and *Sheopal* v. *King-Emperor, 15 Oudh Cases 386*, dissented from. *Reg.* v. *Kalubhai Meghabhai, 7 Bom. H. C. Rep. (Crown Cases) 35*, and *Aiyar* v. *Venkatakrishnayya, 31 Mad. L. J. 837*, followed. *Held*, also, that according to s. 83 of the Indian Registration Act, 1908, all that is required for the initiation of a prosecution under the Act is the "permission," of the Registration officer. This is not the same as a "sanction," which word has received a technical meaning owing to its use in Chap. XV of the Code of Criminal Procedure. *Held*, further, that where a conviction and sentence are set aside merely for want of jurisdiction this does not bar a fresh trial on the same facts. EMPEROR *v* HUSAIN KHAN (1916) . **I. L. R. 39 All. 293**

2. ——— *Joint trial of several accused—Appealable sentence on some and non-appealable sentence on others—No right of appeal for the latter—S. 408 of Criminal Procedure Code, no guide to the interpretation of s. 413 of Criminal Procedure Code.* S. 413 of Criminal Procedure Code prohibit an appeal by a person against whom a non-appealable sentence has been passed even though appealable sentences have been passed against others jointly tried with him. Though for convenience a joint trial of several accused persons under certain circumstances is allowed, on conviction each accused must be deemed to have been convicted in a separate case of his own for the purposes of s. 413 of Criminal Procedure Code. The analogy of s. 1408, Criminal Procedure Code, cannot be extended to s. 413 of Criminal Procedure Code. PIGGOT, J's. view in *Emperor* v. *Lal Singh, I. L. R. 38 All. 395*, not followed. *Palani Koravan* v. *Emperor, 17 Mad. L. J., 248*, distinguished. *Reg.* v. *Muliya Nana, 5 Bom. H. C. R. 24 (Cr. C.)*, and *Reg.* v. *Kalubhai Meghabhai, 7 Bom. H. C. R. 35 (Cr. C.)*, referred to. It does not follow as a matter of course that because some of the accused tried along with others are acquitted on the merits on appeal by them, others should necessarily have the benefit of the finding of the Appellate Court. Citation of the rulings of the Chief Court of Burma, disallowed. VENKATAKRISHNAYYA, *Re* (1916) . **I. L. R. 40 Mad. 591**

——— **ss. 417, 435, 438**—

See ACQUITTAL . **I. L. R. 44 Calc. 703**

——— **ss. 435, 438**—*District Magistrate—Reference to High Court—Power to refer a case heard by Sessions Judge.* A District Magistrate is not empowered to make a reference to the High Court questioning the propriety of judgment by a Sessions

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— ss. 435, 438—*concld.*

Judge. *Queen-Empress* v. *Karamdi, I. L. R. 23 Calc. 250,* followed. EMPEROR *v.* LOBO (1916).

I. L. R. 41 Bom. 47

——— s. 439—

1. ——— *Appealable and non-appealable sentences given on a joint trial—Appeal by some of the accused—Reference made by Appellate Court as to the others.* Of several persons tried jointly by a Magistrate, some received appealable sentences others non-appealable. The former appealed to the Sessions Judge, who acquitted them, but on grounds that were applicable to all. *Held,* that it was the duty of the Judge to bring the cases of the remaining accused to the notice of the High Court under s. 439 of the Code of Criminal Procedure. EMPEROR *v.* BHOLA (1917) **I. L. R. 39 All. 549**

2. ——— *High Court—Revisional jurisdiction—Order of acquittal.* The High Court of Bombay has power, under s. 439 of the Criminal Procedure Code, 1898, to interfere in revision with an order of acquittal; but by a long established practice of the Court, revisional applications against orders of acquittal are not entertained from private petitioners except it be on some very broad ground of the exceptional requirements of public justice. FAREDOON CAWASJI, *In re* (1917).

I. L. R. 41 Bom. 560

——— s. 476—

1. ——— *"Brought under the notice of the Court in the course of a judicial proceeding"—Circumstance fulfilling this requirement of the section.* In a case under s. 147, Indian Penal Code, a certain document was exhibited and used in evidence on behalf of the petitioner who was the accused. The trying Magistrate after having heard the evidence proceeded on leave and while on leave wrote a judgment which he forwarded to the District Magistrate who treated it as nullity and transferred the case to his own file under s. 350, Criminal Procedure Code. Before him the Public Prosecutor applied under s. 494, Criminal Procedure Code, to withdraw from the prosecution. After examining the evidence the District Magistrate allowed this application. Subsequently, after making a preliminary enquiry, he made an order directing the prosecution of the petitioner under ss. 467, 471, 474, Indian Penal Code, in respect of the aforesaid document. *Held,* that the offences as to which the prosecution of the petitioner was directed were brought to the notice of the District Magistrate in the course of a judicial proceeding within the meaning of s. 476, Criminal Procedure Code, and the order made was not without jurisdiction. CHANDRA KISHORE ROY *v* KING-EMPEROR (1916).

21 C. W. N. 755

2. ——— *Magistrate taking cognizance of case on order under section, if can proceed against persons not named in the order.* The District Judge made an order under s. 476 against one R who had applied before him for the probate of a will which in his opinion was *primâ facie* a forgery and in respect of which R was guilty of forgery or using or attempting to use a document knowing it to be forged. Before the Magistrate on the application of the public prosecutor the petitioner who was not a party to the probate proceedings before the District Judge was also

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 476—*contd.*

summoned under ss 120B and 467, Indian Penal Code, in the same proceeding which was pending against R. *Held,* that the petitioner was not a party to the proceedings in the Civil Court and as the offence which appeared to have been committed was one of those described in cl. (*1*) (*c*) of s. 195, Criminal Procedure Code, neither sanction under that section nor a complaint of the Court under s. 476 was a necessary precedent to proceedings against him. That the Criminal Procedure Code provides for the taking cognizance of offences and not of offenders and a Magistrate who has legally taken cognizance of an offence on an order under s. 476 has jurisdiction to proceed against any one who may be proved by the evidence to be concerned in that offence, whether he was mentioned in the order under s. 476 or not. GIRIDHARI LAL SEROWGEE *v.* KING-EMPEROR (1916).

21 C. W. N. 950

3. ——— *Offence not mentioned in s. 195—Preliminary enquiry, necessity of—Indian Penal Code (Act XLV of 1860), s. 225B.* Where it was reported to a Munsi that the accused persons had endeavoured to rescue the judgment-debtor in a certain case tried by the Munsi from the custody of the executing peon and the Munsi purporting to act under s. 476, Criminal Procedure Code, made an order sending up the accused to the Magistrate for trial under s. 225B, Indian Penal Code: *Held,* that the order made was bad for two reasons, *viz.*, that the offence under s. 225B is not one of the offences mentioned in s. 195, Criminal Procedure Code, and that the order was made without making any preliminary enquiry. That there may be cases where no preliminary enquiry is necessary, for example, in a case where the Judge is trying the case and all the facts which are material to the charge have been brought to the notice of the Judge or have come out during the course of the hearing of the case and the Judge is already in possession of all the material facts on which it is necessary for him to form the judgment. But in a case like the present when the incident took place outside the Court and as to which the Judge himself could have no knowledge and as to which evidence must be called for, unless the Court holds such a preliminary enquiry as may be necessary to enable him to determine whether or not there is any case fit to be sent to the Magistrate, it has no jurisdiction to send the accused under s. 476, Criminal Procedure Code. TARAK DAS MOITRA *v.* KING-EMPEROR (1916).

21 C. W. N. 125

4. ——— *Practice—Order for prosecution for perjury—Court not bound to set out assignments of perjury alleged—Civil Procedure Code, 1908, 115—Revision—Material irregularity.* In every case, whether under s. 195 or s. 476 of the Code of Criminal Procedure, the particular statement, when the offence refers to a statement, should be set out, so that the accused person should not be taken by surprise, but should clearly know what is the statement which he is required to meet. It does not, however, follow that non-specification of the statement is a material irregularity justifying interference in revision by the High Court. EMPEROR *v.* CHHOTEY LAL (1917).

I. L. R. 39 All. 367

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concld.*

——— **s. 476**—*concld.*

5. ——— *Scope of—Offence not committed by a party to the proceeding.* S. 476 of the Code of Criminal Procedure (Act V of 1898) does not apply to cases where the offence was not committed by a party to a proceeding in respect of a document produced or given in evidence in such proceeding. *Abdul Khadar* v. *Meera Saheb, I. L. R. 15 Mad. 224*, followed. RAMALINGAM, *Re.* **I. L. R. 40 Mad. 100**

——— **s. 488**—*Jurisdiction of Court within whose local limits the husband temporarily resided on the date of the institution of the case and some days previously.* Where in a case under s. 488, Criminal Procedure Code, instituted before the Chief Presidency Magistrate, it appeared that the husband ordinarily resided outside Calcutta but was temporarily there on the date the application was filed and for some days previously. *Held*, that this temporary residence was sufficient to give the Calcutta Court jurisdiction under sub-s. (*9*) of s. 488, Criminal Procedure Code. JOLLY *v.* JOLLY (1917) . . . . . **21 C. W. N. 872**

——— **s. 491**—

See JURY, TRIAL BY. **I. L. R. 44 Calc. 723**

——— **s. 528**—*Transfer of case—Power of District Magistrate, where Subdivisional Magistrate has previously refused to transfer on application by same party.* A District Magistrate is not precluded from exercising his power of transfer of a case under s. 528 of the Criminal Procedure Code, on the application of a party, by reason of the fact that the Subdivisional Magistrate had previously refused to transfer the case at the request of the same party. *Thaman Chetty* v. *Alagiri Chetty, I. L. R. 14 Mad. 399*, followed. *Raghunatha Pandaram* v. *King-Emperor, I. L. R. 26 Mad. 140*, dissented from. SANTHAPPA SETHURAN *v.* GOVINDASWAMY KANDIYAR (1916) . . . **I. L. R. 40 Mad. 791**

——— **s. 537**—

See COUNTERFEIT COIN. **I. L. R. 44 Calc. 477**

——— **s. 565**—*Notification as to residence or change of residence—Temporary absence for a night not notified—Whether an offence under Indian Penal Code (Act XLV of 1860), s. 176.* Where all that was proved was that the accused who had been ordered to notify his residence and change of residence under s. 565, Criminal Procedure Code (Act VI of 1898), was absent from his house for a single night without notifying his absence: *Held*, that such temporary absence did not amount to a change of residence and that the accused was not guilty of an offence under s. 176, Indian Penal Code (Act XLV of 1860). *Re* CHENGADU (1917). **I. L. R. 40 Mad. 789**

CRIMINAL TRESPASS.

See PENAL CODE (ACT XLV OF 1860) s. 441 . . **I. L. R. 39 All. 722**

See THEFT . . **I. L. R. 44 Calc. 66**

CRIMINAL TRIBES ACT (III OF 1911).

——— **s. 23** (*1*) (**a**) **and** (**b**)—*First conviction for scheduled offence after the Act—Conviction for such offences, prior to the Act—Punishment.* An accused person who belongs to a tribe notified to come under the Criminal Tribes Act (III of 1911) and who is for the first time after the enactment of that Act convicted of an offence specified in the schedule to that Act, is liable to be punished under cl. (*a*) and not cl. (*b*) of s. 23 (*1*) of the Act, though he may have been convicted once or serveral times of such offence before the passing of the Act. SELLAMANI, *Re* (1916) . **I. L. R. 40 Mad. 923**

CROWN.

——— **applicability of Transfer of Property Act (IV of 1882) to**—

See LEASE . **I. L. R. 40 Mad. 910**

CROWN DEBT.

——— **priority of**—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 69 . **I. L. R. 40 Mad. 767**

CROWN-GRANTS.

——— **rule of construction of**—

See INAM . . **I. L. R. 40 Mad. 268**

CRUELTY TO ANIMALS.

See PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890), s. 3, CL. (*b*). **I. L. R. 41 Bom. 654**

CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

See PENAL CODE (ACT XLV OF 1860). s. 300, CL. (*3*) . **I. L. R. 41 Bom. 27**

CUSTODY.

See COUNTERFEIT COIN. **I. L. R. 44 Calc. 477**

See JUTE . . **I. L. R. 44 Calc. 98**

CUSTOM.

See CUSTOM OF THE TRADE.

See PRE-EMPTION. **I. L. R. 39 All. 127, 480**

See SCHOOL-MASTER. **I. L. R. 44 Calc. 917**

——— **expert evidence in proof of**—

See CUTCHI MEMONS. **I. L. R. 41 Bom. 181**

1. ——— *Inheritance—Customs among tribal communities in the Punjab—Agnates—General custom excluding daughters, exceptions to—Succession of daughter when married to near collateral who is in her father's house as khana-damad (resident son-in-law)—Riwaj-i-am or official record of customs, value of, as evidence.* A Mahomedan Jat belonging to the sub-community of Dabs settled in the Jhang District of the Punjab, died without male issue, and leaving a widow and a daughter who was married to a near collateral of the deceased who was also his *khana-damad* or resident son-in-law. In a suit by the respondents who as collaterals based their claim to a share of the property of the deceased on a general custom of agnatic succession in the community or tribe to the exclusion of the daughter and her descendants, the appellant, the son of the daughter of the deceased who was the devisee of his will, alleged that a

CUSTOM—*contd.*

daughter married to a near collateral who takes up his residence in the father-in-law's house as a *khana-damad*, succeeded to her father's inheritance in preference to the agnatics, and produced in support of this special custom the Riwaj-i-am or official records of custom in addition to a considerable amount of oral testimony. *Held* (reversing the decision of the Chief Court), that on the death of the widow who had inherited the entire estate, the daughter and her son were entitled to succeed in preference to the respondents. Assuming that such a general custom as that relied on by the respondents existed, as to which the decisions of the Punjab Chief Court were by no means uniform, specially in the case of Mahomedan tribes who were endogamous, it was clear that the rule was admittedly subject to many exceptions: see Rattigan's "Digest of Customary Law for the Punjab," Chap. II, para. 23, where they are enumerated; and Roe's "Tribal Law in the Punjab," where particular stress is laid on the value of the Riwaj-i-am as a record of tribal customs and it is said that "a son-in-law of the house is a regular institution." *Held*, also, that the Riwaj-i-am was a public record prepared by a public officer in discharge of his duties and under Government rules, and was clearly admissible in evidence to prove the facts therein entered subject to rebuttal. And their Lordships were of opinion that the statements in the Riwaj-i-am for the Jhang District formed a strong piece of evidence in support of the custom set up by the appellant, which it lay upon the respondents to rebut, and they had failed to do so. BEG *v.* ALLAH DITTA (1916).

I. L. R. 44 Calc. 749

2. ——— *Mahomedan law—Succession—Evidence admissible to prove custom at variance with the Mahomedan law—Exclusion of daughters from inheritance—"Riwaj-i-am"—Value of the riwaj-i-am as evidence.* One Saiyid Asghar Ali, a native of Qasba Palwal in the Gurgaon district of the Punjab, and the owner of a small amount of land in Palwal, though not a "Biswadar" nor a member of an agricultural family, entered the service of the Government of the North-Western Provinces and became a tahsildar. He rendered distinguished service during the mutiny, and was rewarded by Government with the grant of a village called Wair Badshahpur in the Bulandshahr district. After his retirement Asghar Ali retired to his native town. He died in 1876, leaving him surviving two widows, two daughters and a minor son. On the petition of the widows the Bulandshahr estate was taken over by the Court of Wards. When the son came of age, the Court of Wards released half the estate in his favour; but retained half for the benefit of the widows and the daughters and their heirs. After the death of the widows and one of the daughters, the son, Ali Asghar sued to recover possession of the remaining half of the Bulandshahr property on the ground that, according to the custom of the Punjab, and the local custom of the biswadars of Palwal in particular, daughters were not entitled to any share in the paternal inheritance in the presence of a son. *Held*, that evidence was admissible to prove the custom alleged by the plaintiff, notwithstanding that such custom was contrary to the Mahomedan law; but that the plaintiff had failed to prove that any such custom as that set up by him applied to his family. The value as evidence of the document

CUSTOM—*concld.*

known as "*Riwaj-i-am*" discussed. ALI ASGHAR *v.* THE COLLECTOR OF BULANDSHAHR (1917).

I. L. R. 39 All. 574

CUSTOM OF THE TRADE.

See CONTRACT ACT (IX OF 1872), SS. 1, 118.

I. L. R. 41 Bom. 518

CUTCHI MEMONS.

——— *Custom—Onus of proof—Expert evidence in proof of custom—Opinions of practising lawyers, not relevant—Opinion and beliefs of leading members of community influenced by judicial and professional prepossessions, not relevant—Custom must be established by deliberate acts of volition—The Indian Evidence Act (I of 1872), ss. 32, cl. (3), and 48—Extent to which Cutchi Memons are governed by Hindu law—Cutchi Memons governed by the Hindu law of succession and inheritance as applying to an intestate separated Hindu possessed of self-acquired property—The Hindu law of joint family not applicable to Cutchi Memons—No distinction between ancestral property, joint family property and self-acquired property—Cutchi Memons may will away entire property—Cutchi Memons' wills to be interpreted according to Mahomedan and not Hindu law—Bequests in connection with 'Khairat,' i.e., charity work not void for vagueness—Alternative bequests in favour of charity not void as gifts conditioned in futuro—The Indian Limitation Act (IX of 1908), Art. 127—Costs.* A Cutchi Memon disposed of the whole of his property by will, part in favour of the next-of-kin and part in favour of charity. The provisions in favour of charity were as under: "I direct my executors and trustees as follows:—They shall out of my '*punji*' set apart Rs. 3,00,000 (namely, three lacs) and shall therewith purchase Government Promissory Loan Notes or Port Trust Bonds, or they shall invest the said moneys for a short time in any of the other securities written (mentioned) in the twentieth section of the Indian Trusts Act.....My executors and trustees shall spend according to law the said sum or certain portions thereof in connection with some good works or charity in such manner as they may think just and proper, such as Hospital, Sanitarium, Suvavadkhana (lying-in hospital), Musafarkhana (resting house for travellers), Madressas (schools), Scholarships, Dharamshalas, Medical Dispensaries, &c., (*i.e.*) in connection with any such 'Khairati' that is, 'charity' work, that is, in connection with such different works of charity. But the said sum shall not be expended in any other way or my heirs or the residuary legatee whom I have appointed in this my will shall not have any right to the same. I give full authority to my executors and trustees in that behalf" ..... "Should no son be born to me agreeably to what is written above, or should (one) be born and should he die without leaving a son or heirs (daughters are not included amongst heirs), then as regards my whatever '*punji*' that there may be left, I give the whole thereof to my executors and trustees and direct them as follows:—They shall utilize the whole of the said '*punji*' or portions thereof in such manner as they in their discretion think proper in connection with the above mentioned or any other good works of Khairat (charity) and I give full authority to my executors and trustees in that behalf." It was contended, *inter alia*, that the testator could not validly dispose of more than one-third of his property by will and

CUTCHI MEMONS—*concld.*

that the above dispositions in favour of charity were void on two grounds (*a*) that they were bad for uncertainty, (*b*) that they were bad because they were conditional. *Held*, (i) that Cutchi Memons had acquired by custom the power of disposing of the whole of their property by will; (ii) that it was not proved in this case and never had been proved affirmatively that the Cutchi Memons had ever adopted as part of their customary law the Hindu law of the joint family, as a whole, or the distinction existing in that law between ancestral family, and joint family and self-acquired property, (iii) that Cutchi Memons were subject by custom to the Hindu law of succession and inheritance as it would apply to the case of an intestate separated Hindu possessed of self-acquired property and no more, (iv) that the will challenged in this suit was a good and valid will in all respects, and that the bequests to charity were neither void for uncertainty nor bad under the Mahomedan law as offending against the radical principle that a gift must be made in *præsenti* and not conditioned *in futuro*. *The Kojahs and Memons' Case, (1847) Perry O. C. 110,* considered. *Mahomed Sidick* v. *Haji Ahmed, I. L. R. 10 Bom. 1* dissented from. *Jan Mahomed* v. *Datu Jaffer, I. L. R. 38 Bom. 449,* followed and the judgment therein incorporated. *Abraham* v. *Abraham, 9 Moo. I. A. 195; Ahmedbhoy Hubibhoy* v. *Cassumbhoy Ahmedbhoy, I. L. R.* 13 Bom. 534, *Shivji Hasam* v. *Datu Mavji Khoja,* 12 Bom H. C. R. 281, *Hirba* v. *Gorbai,* 12 Bom. H. C. R. 294, and *Gangabai* v. *Thavar Mulla,* 1 Bom. H. C. R. 71, referred to, *Jamabai* v. *R. D. Sethna, I. L. R.* 34 Bom. 604, and *Chunilal Parvatshankar* v. *Bai Samrath, I. L. R.* 38 Bom. 399. referred to and distinguished. ADVOCATE-GENERAL OF BOMBAY *v.* JIMBABAI (1915) . **I. L. R. 41 Bom. 181**

D

DAMAGES.

———— **against manager of a joint Hindu family—**

See CONTRACT ACT (IX OF 1872), S. 73. **I. L. R. 40 Mad. 338**

———— **suit for—**

See LEASE . **I. L. R. 40 Mad. 910**

———— *Breach of contract of marriage—Procuring a breach of the contract—Liability for the breach—Conspiracy to break the contract.* Defendant No. 1 agreed to give his daughter in marriage to the plaintiff; but subsequently he broke the contract and married her to the son of defendant No. 2. The plaintiff having sued to recover damages for the breach of contract from defendants, the lower Courts decreed the claim. On appeal: *Held*, that there was no sufficient foundation for a verdict against defendant No. 2, inasmuch as there was nothing to show that defendant No. 2 directly and personally attempted to influence defendant No. 1 to break his contract with the plaintiff, nor was there anything like conspiracy between defendant No. 2 and his son to bring about that result. JEKISONDAS HARKISONDAS *v.* RANCHODDAS BHAGVANDAS (1916) **I. L. R. 41 Bom. 137**

DAUGHTER.

———— **bequest to—**

See WILL . . **I. L. R. 44 Calc. 181**

———— **succession of—**

See CUSTOM **I. L. R. 44 Calc. 749**

DE NOVO TRIAL.

See REMAND **I. L. R. 44 Calc. 929**

DEBT.

See PAYMENT TOWARDS DEBT

———— **contracted in Singapore—**

See BANKRUPTCY **I. L. R. 40 Mad. 581**

DEBTOR.

———— **right of—**

See INSOLVENCY **I. L. R. 44 Calc. 535**

DEBTOR AND CREDITOR.

See INSOLVENCY . **I. L. R. 44 Calc. 899**

DECLARATORY DECREE.

See HINDU LAW—GIFT. **I. L. R. 40 Mad. 818**

DECREE.

See COLLUSIVE DECREE.

See DECLARATORY DECREE.

See EX PARTE DECREE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 60 (*c*). **I. L. R. 41 Bom. 475**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 144 . **I. L. R. 41 Bom. 625**

See PRE-EMPTION. **I. L. R. 44 Calc. 675**

———— **conditional, on money being paid into Court—**

See EXECUTION OF DECREE **I. L. R. 39 All. 193**

———— **payable by instalments—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182 (7) . **I. L. R. 39 All. 230**

———— **power to alter—**

See LIMITATION . **I. L. R. 44 Calc. 759**

———— **revivor of—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 183 . **I. L. R. 40 Mad. 1127**

———— **security for performance of—**

See CIVIL PROCEDURE CODE (1908), S. 145 . **I. L. R. 39 All. 225**

———— **transfer of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 144 . **I. L. R. 40 Mad. 299**

1. ———— *Appeal—Dismissal for default—Merger—Civil Procedure Code (Act V of 1908), s. 2 (2); O. XXI, r. 22—Omission to give notice under O. XXI, r. 22, effect of—Bengal Tenancy Act (VIII of 1885), s. 155 (3)—Extension of time under s. 155 (3).* The original decree is merged in the appellate decree whether the latter confirms, amends, or reverses the original decree, and it is the appellate decree alone which can be executed. *Abdul Rahiman* v. *Maidin*

DECREE—*contd.*

Saiba, I. L. R. 22 Bom. 500, Chandrakant v. *Lakshman, 24 C. L. J. 517*, referred to. But this doctrine cannot be applied where the appeal is dismissed for default. In such a case the appeal fails for non-prosecution, and it cannot be said that the Court of Appeal adopts the decree of the Primary Court. The judgment of the Lower Court therefore, is the judgment to be enforced. *Bipro Das* v. *Chunder Seekur, 7 W. R. 521*, referred to. S. 2 (2) of the Code of Civil Procedure, 1908, expressly provides that any order of dismissal for default is not a decree. The notice prescribed by s. 248 of the Code of Civil Procedure now replaced by O. XXI, r. 12, is necessary in order that the Court may obtain jurisdiction to proceed against the property of the judgment-debtor by way of execution. The omission to give notice, as required by the rule, is not a mere irregularity which makes the proceedings voidable but is a defect which goes to the very root of the proceedings and renders it void for want of jurisdiction. *Gopal Chunder* v. *Gunamani Dasi, I. L. R. 20 Calc. 370, Sahdeo Pandey* v. *Ghasiram, I. L. R. 21 Calc. 19, Parashram* v. *Balmukund, I. L. R. 32 Bom. 572*, referred to. S. 155 of the Bengal Tenancy Act enables the Court to give the tenant relief on the footing that there shall be no forfeiture at all when relief is granted; the forfeiture is stopped *in limine*, so that there is no question of any destruction of an interest which has to be called into existence again. It is competent to the Court to entertain an application for extension of the period fixed by the decree for the performance thereof under s. 155 (3) of the Bengal Tenancy Act. Whether an order for extension of time should be made or not depends upon the circumstances of the litigation, *i.e.*, upon the circumstances disclosed at the original trial and the events subsequent *Sinnaman* v. *Sham Charan, 16 C. W. N. 1090; 16 C. L. J. 520*, referred to. SHYAM MANDAL *v.* SATINATH BANERJEE (1916) . **I. L. R. 44 Calc. 954**

2. ——————— *Court executing the decree cannot go behind the decree—Remedies of the aggrieved party—Practice.* The Court, executing the decree, must take the decree as it stands and has no power to go behind the decree or entertain an objection to the legality or correctness of the decree. The validity of a decree cannot be questioned in execution proceedings on the ground that as the lunatic plaintiff was not properly represented by a competent next friend in the suit, no decree for costs could have been made against him. A proceeding to enforce a judgment is collateral to the judgment, and, therefore, no enquiry into its regularity or validity can be permitted in such a proceeding. On this principle it can properly be held that a judgment against a person who was *non compos mentis* at the time of the trial and yet was not represented by a legal guardian, is not to be impeached in execution, but should be reversed or annulled in some direct proceeding taken for that purpose. Such a judgment can be attacked, for instance, by way of an application for review to the Court which made it, by way of an appeal or application for revision to a superior tribunal or by way of a regular suit in a Court of competent jurisdiction, but the Court which made the decree cannot, when called upon to execute it, be invited to hold that the decree was erroneously or improperly made. *Rashid-un-nisa* v. *Muham-*

DECREE—*concld.*

mad, I. L. R. 31 All. 572; L. R. 36 I. A. 168, followed. *Papamma Rao* v. *Vira Pratapa, I. L. R. 19 Mad. 249; L. R. 23 I. A. 32, Grish Chunder Lahiri* v. *Shoshi Shikhareswar, I. L. R. 27 Calc. 951; L. R. 27 I. A. 110, Hassan Ali* v. *Gauzi Ali, I. L. R. 31 Calc. 179, Rashbehari* v. *Joynanda, 4 C. L. J. 475, Shib Lakshan* v. *Tarangini, 8 C. L. J. 20, Madan Mohan* v. *Bhikar Sahu, 16 C. L. J. 517, Ram Nath* v. *Basanta Narain, 18 C. L. J. 209, Ramphal Rai* v. *Ram Baran Rai, I. L. R. 5 All. 53, Muttia* v. *Virammal, I. L. R. 10 Mad. 283, Venkatachala Reddi* v. *Venkatarama Reddi, I. L. R. 24 Mad. 665, Appa Rao* v. *Krishna Ayyangar, I. L. R. 25 Mad. 537, Sheik Budan* v. *Ram Chandra, I. L. R. 11 Bom. 537, Prasanna Kumari Debi* v. *Sris Chandra, 22 C. L. J. 551, Chhoti Narain Singh* v. *Rameshwar, 6 C. W. N. 796, Khiarajmal* v. *Daim, I. L. R. 32 Calc. 296; L. R. 32 I. A. 23, Radha Prasad Singh* v. *Lal Sahab Rai, I. L. R. 13 All. 53; L. R. 17 I. A. 150, Janardhan* v. *Ram Chandra, I. L. R. 26 Bom. 317, Imdad Ali* v. *Jagan Lal, I. L. R. 17 All. 478, Subramania* v. *Vaithinatha, I. L. R. 38 Mad. 682, Gomatham* v. *Komandur, I. L. R. 27 Mad. 118, Amichand* v. *Collector of Sholapur, I. L. R. 13 Bom. 234, Geereeballa* v. *Chunder Kant, I. L. R. 11 Calc. 213, Devkabai* v. *Jefferson, I. L. R. 10 Bom. 248, Rama Prosad* v. *Anukul Chandra, 20 C. L. J. 512, Pasumarti* v. *Ganti, 28 Mad. L. J. 525, Arjun Das* v. *Gunendra Nath, 20 C. L. J. 341, Chuck* v. *Cremer, 2 Phil, 113, Jaigobind* v. *Patesri Partap Narain Singh, 27 All. W. N. 286*, referred to. KALIPADA SARKAR *v.* HARI MOHAN DALAL (1916).

I. L. R. 44 Calc. 627

DEED.

——————— **form of proof of—**

See EVIDENCE . **I. L. R. 44 Calc. 345**

DEFAULTER.

See SALE FOR ARREARS OF REVENUE.

I. L. R. 44 Calc. 412

DEFENCE.

——————— **opportunity for, or notice, dismissal without—**

See MUTT . **I. L. R. 40 Mad. 177**

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

——————— **s. 13**—*Mortgage—Several mortgages connected together and involving the same security—One suit for account and redemption—Mode of taking account.* Where there are several mortgages in favour of the same mortgagee, all connected with and involving the same security, the provisions of s. 13 of the Dekkhan Agriculturists' Relief Act, 1879, should not be held to isolate the account of each mortgage when there is one suit filed by the mortgagor for the redemption of all the mortgages. DHONDI BIN RANOJI *v.* REVAPPA SATAPPA (1917).

I. L. R. 41 Bom. 453

DELAY.

See PETITION . **I. L. R. 41 Bom. 36**

——————— **in filing appeal—**

See LIMITATION ACT (IX OF 1908), s. 5.

I. L. R. 41 Bom. 15

DESERTION.

See DIVORCE . **I. L. R. 44 Calc. 1091**

DILUVIATED LAND.

——— suit to recover—

See LIMITATION . **I. L. R. 44 Calc. 858**

DIRECTOR.

See COMPANIES ACT (IV OF 1882), SS. 137 AND 141 . **I. L. R. 40 Mad. 706**

See COMPANIES ACT (VII OF 1913), S. 38. **I. L. R. 41 Bom. 76**

DISCHARGE.

See INSOLVENCY . **I. L. R. 44 Calc. 374**

See SANCTION FOR PROSECUTION. **I. L. R. 44 Calc. 970**

——— application for—

See INSOLVENCY . **I. L. R. 44 Calc. 899**

DISCRETION.

See COSTS . . **21 C. W. N. 339**

——— of the district Judge—

See DIVORCE ACT (IV OF 1869), S. 14. **I. L. R. 41 Bom. 36**

DISCRETION OF COURT.

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), S. 18 (3). **I. L. R. 41 Bom. 312**

See SURETY . **I. L. R. 44 Calc. 737**

DISHONEST INTENT.

See THEFT . **I. L. R. 44 Calc. 66**

DISMISSAL.

See DISMISSAL FOR DEFAULT.

See SCHOOL-MASTER. **I. L. R. 44 Calc. 917**

——— without notice or opportunity for defence—

See MUTT . **I. L. R. 40 Mad. 177**

DISMISSAL FOR DEFAULT.

See DECREE . **I. L. R. 44 Calc. 954**

See SMALL CAUSE COURT SUIT. **I. L. R. 44 Calc. 550**

DISPOSSESSION.

See DILUVIATED LAND. **I. L. R. 44 Calc. 858**

DISQUALIFICATION.

See PLEADER . **I. L. R. 44 Calc. 290**

DISTRICT JUDGE.

See CRIMINAL PROCEDURE CODE, S. 195. **I. L. R. 39 All. 657**

DISTRICT MAGISTRATE.

——— reference to High Court by—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 435, 438. **I. L. R. 41 Bom. 47**

DISTRICT MUNICIPALITIES ACT, MADRAS (IV OF 1884).

——— **ss. 188, cl. (5) and 189**—*Application for license to boil paddy—Refusal of license, more than thirty days after application—Boiling paddy subsequent to refusal—Charge under s. 189 of the Act—Conviction, if legal.* Where a petitioner applied to the Chairman of a municipality for the continuance of a license for boiling paddy at a certain place during the next financial year, but the license was refused more than thirty days after the receipt of the application by the Chairman, and the applicant used the place for boiling paddy notwithstanding the refusal: *Held*, that the petitioner was not guilty of an offence under s. 189 of the District Municipalities Act, as the place in question should be held to be duly licensed for the financial year for which the license was sought under s. 188, cl. (5) of the Act. *Re* VENKATASUBBAYYA (1916). **I. L. R. 40 Mad. 589**

DISTRICT MUNICIPALITIES ACT MADRAS (IV OF 1884)—*concld.*

——— **ss. 188, cl. (5) and 189**—*concld.*

DIVORCE.

See DIVORCE ACT.

See MAHOMEDAN LAW—DIVORCE.

1. ——— *Husband and wife—Petition by husband—Adultery—Condonation—Collusion—Conduct conducing to adultery—Desertion—Divorce Act (IV of 1869), ss. 12, 13, 14.* Condonation is a conclusion of fact, not of law, and means the complete forgiveness and blotting out of a conjugal offence followed by cohabitation, the whole being done with full knowledge of all the circumstances of the particular offence forgiven. The forgiveness which is to take away the husband's right to a divorce must not fall short of reconciliation and this must be shown by a re-instatement of the wife in her former position which renders proof of conjugal cohabitation with restitution of conjugal rights necessary. Collusion is held to exist where the initiation of the proceeding for dissolution of marriage is procured and its conduct (especially if abstention from defence be a term) provided for by agreement or bargain between the spouses or their agents, although it does not appear that any specific fact has been falsely dealt with or withheld. The mere fact that the husband refused marital intercourse to the wife by itself is not such wilful neglect or misconduct as conduced to the adultery; nor can the fact that the parties went their own way, in the sense that they had their own friends and interests, be said to be conduct conducing to adultery, even when coupled with the abstinence by the husband from marital intercourse. The fact that the husband had abstained from marital intercourse without reasonable cause and that the parties went their own way in the sense that they had their own friends and interests, would not justify a finding of desertion on the part of the petitioner. STE. CROIX *v.* STE. CROIX (1917). **I. L. R. 44 Calc. 1091**

2. ——— *Suit against wife—Wife found guilty of adultery—Decree nisi on husband's petition—Appeal—Wife's costs, application for—Liability of husband—Practice and procedure.* Where the wife has been herself found guilty of adultery by the Court of first instance and then actively brings the matter before the Court on appeal, the husband cannot be justly called upon by her as a matter of right to provide for her costs. *Robertson* v. *Robertson, 6 P. D. 119, Otway* v. *Otway, 13 P. D. 141. Holt* v. *Holt, 28 L. J. (P. & M.) 12,* referred to. *Per* MOOKERJEE, *J.* It is plain, however, that the

DIVORCE—*concld.*

doctrine in question is an encroachment upon the ordinary rule that costs follow the event, and, speaking for myself, I am of opinion that every attempt to extend its operation should be cautiously scrutinised. STE. CROIX *v.* STE. CROIX (1916) . . . **I. L. R. 44 Calc. 35**

DIVORCE ACT (IV OF 1869).

———— **ss. 12, 13, 14—**

See DIVORCE . **I. L. R. 44 Calc. 1091**

———— **s. 14**—*Husband and Wife—Dissolution of marriage—Misconduct of husband petitioner—Grave and unexplained delay in filing petition—Discretion of the District Judge—High Court's power to interfere with the discretion.* The petitioner, who was the husband, prayed for a dissolution of the marriage on the ground of his wife's adultery. The District Judge, exercising the discretion confided to him under s. 14 of the Indian Divorce Act, 1869, refused to grant a decree *nisi* in view of the following circumstances: (*i*) that there was grave and unexplained delay before any complaint was made by the husband as regards his wife's abandonment of him; (*ii*) that both husband and wife had combined to withhold facts from the Court; (*iii*) that husband had been guilty not of an isolated act, but of a persistent course of adultery. *Held*, that it was impossible for the High Court as a Court of Appeal to say that the District Judge's discretion was wrongly or improperly exercised adversely to the petitioner. PALMER *v.* PALMER (1916) . . . **I. L. R. 41 Bom. 36**

DOCUMENT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54 . **I. L. R. 41 Bom. 550**

———— **production of in Court—**

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 1002

———— **proof of—**

See EVIDENCE ACT (I OF 1872), SS. 68, 69 . . **I. L. R. 39 All. 109, 112**

———— **construction of—**

See CONSTRUCTION OF DOCUMENT.

DOMICILE.

See SUCCESSION ACT (X OF 1865), SS. 7, 9, 10 . . **I. L. R. 41 Bom. 687**

DONOR'S FAMILY.

———— **benefit to—**

See MAHOMEDAN LAW—WAKF.
L. R. 44 I. A. 21

DOWRY.

See CONSTRUCTION OF DOCUMENT.
I. L. R. 41 Bom. 5

DUNNAGE.

See CHARTER-PARTY.
I. L. R. 41 Bom. 119

DVYAMUSHYAYANA ADOPTION.

See HINDU LAW—ADOPTION.
I. L. R. 41 Bom. 315

E

EASEMENT.

———— *Water flowing down from higher to lower paddy-land carrying fish—Owner of lower land, if after 20 years' user, can prevent owner of higher land from intercepting fish when on his own land.* By catching fish in paddy-land belonging to himself peaceably and uninterruptedly for over 20 years, a plaintiff does not acquire a right of easement which entitles him to restrain the defendant, the owner of paddy-land on a higher level, from catching on his land fish which by reason of the water on plaintiff's land being fed by water flowing down from defendant's land would have come with the water into plaintiff's land. KALANDAR MANDAL *v.* AJIMODDI MANDAL (1917) . **21 C. W. N. 599**

EASEMENTS ACT (V OF 1881).

———— **s. 60**—*License—Denial by licensee of licensor's title. Held*, that a licensee in possession does not, like a tenant, by denying the title of the grantor of the licence, forfeit the licence and become liable to immediate ejectment. *Dharam Kunwar* v. *Fakira*, All Weekly Notes, 1901, p. 157, followed. MALIK AKBAR ALI KHAN *v.* SHAH MUHAMMAD (1917) . . **I. L. R. 39 All. 621**

EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT (II OF 1907).

———— **ss. 3 and 5 (e)**—*The District Magistrate, power of, to interfere with order by a Criminal Court under s. 3 of the Act.* The District Magistrate has no power either under the E. B. and Assam Disorderly Houses Act or any other law to interfere with an order passed by a Criminal Court in the exercise of its jurisdiction under s. 3 of the Act. LOLIT MOHUN CHAKRAVARTY *v.* HARENDRO KUMAR DEY (1917).
21 C. W. N. 1135

EAST INDIA COMPANY.

———— **rights of—**

See HABEAS CORPUS.
I. L. R. 44 Calc. 459

EAST INDIAN RAILWAY.

———— *Sender's risk-note making Railway administration liable only if complete package lost, whether opposed to public policy.* The sender's risk note used in the East Indian Railway system under which the Railway Company takes liability only when there is a loss of a complete package due to wilful negligence of their staff or theft by their servants is not opposed to public policy. KALI DAS MULLICK *v.* E. I. RAILWAY CO. (1917) . . **21 C. W. N. 815**

EJECTMENT.

See FORCIBLE EJECTMENT,

See OCCUPANCY HOLDING.
I. L. R. 44 Calc. 272

———— **suit for—**

See LANDLORD AND TENANT.
I. L. R. 44 Calc. 403

ELDEST SON.

See BURMESE LAW—INHERITANCE.
I. L. R. 44 Calc. 379

ELECTION.

———— right of—

See BURMESE LAW.

I. L. R. 44 Calc. 379

———— *Public body—Vacancy —Election to fill up vacancy by less than a majority of voters, validity of—Appointment of a minor as Muthawalli of a mosque, validity of.* According to a scheme framed by the High Court, a mosque in Madras was governed by a managing committee of five members, including the President, and three *Muthawallis* working under them, and vacancies in the committee were to be filled by election by an electoral body consisting of the remaining committee members and the three *Muthawallis* and the committee was to appoint "competent men" as *Muthawallis* for the mosque. In 1906, one *M.M.* who was then eleven years of age was appointed by the committee as one of the *Muthawallis*. In 1914 the electoral body consisted of the president, three other members of the committee and two *Muthawallis* excluding *M.M.* Notice of a meeting to fill up a vacancy in the committee in 1914 was served on all the members of the electoral body except *M.M.* Three members of the electoral body attended the meeting at which the plaintiff was elected. There was no rule or practice fixing the quorum for meetings of the electoral body: *Held*, (i) that plaintiff having been elected at a meeting attended by less than a majority of those entitled to vote, his election was invalid, (ii) that the election of *M.M.* as *Muthawalli* while he was a minor was invalid *ab initio*, and (iii) that *M.M.* even though a major at the time of plaintiff's election, was not entitled to vote, and want of notice to him of the meeting was immaterial. RAZA *v.* ALI (1916) . . . . **I. L. R. 40 Mad. 941**

EMERGENCY LEGISLATION.

See HABEAS CORPUS.

I. L. R. 44 Calc. 459

EMERGENCY LEGISLATION CONTINUANCE ACT (I OF 1915).

See HABEAS CORPUS.

I. L. R. 44 Calc. 459

ENDORSEMENT.

———— fraudulently obtained, suit on—

See SPECIFIC RELIEF ACT (I OF 1877), SS. 39, 40, 45 . **I. L. R. 39 All. 103**

ENDOWMENT.

See HINDU LAW—ENDOWMENT.

See CONSTRUCTION OF DOCUMENT.

I. L. R. 39 All. 311

See HINDU LAW—ENDOWMENT.

I. L. R. 39 All. 553

ENEMY.

———— attempting to trade with—

See TRADING WITH THE ENEMY.

I. L. R. 40 Mad. 34

ENFORCEMENT OF RIGHT.

See MAHOMEDAN LAW—PRE-EMPTION.

I. L. R. 44 Calc. 47

ENFRANCHISEMENT.

———— of Shrotriyam villages, effect of

See INAM . **I. L. R. 40 Mad. 268**

ENFRANCHISEMENT AND RESUMPTION.

———— of personal or service inams, distinction between—

See CHARITABLE INAMS.

I. L. R. 40 Mad. 939

ENHANCEMENT OF SENTENCE.

See SENTENCE, ENHANCEMENT OF.

EQUITY OF REDEMPTION.

See MORTGAGOR AND MORTGAGEE.

I. L. R. 41 Bom. 357

ERROR.

See SALE BY GOVERNMENT.

I. L. R. 44 Calc. 328

ERRORS OR OMISSIONS.

———— correction of—

See REMAND . **I. L. R. 44 Calc. 929**

ESTATE.

———— Tanjore Palace Estate, whether an—

See MADRAS ESTATES LAND ACT (I OF 1908), S. 3 (*2*), (*d*).

I. L. R. 40 Mad. 389

ESTATES LAND ACT (MAD. I OF 1908).

———— ss. 3 (*2*) (*c*) and 8—*Meaning of "unsettled jagir," as distinguished from ordinary inams —Jurisdiction of Civil Courts.* A personal grant for subsistence in no way differing from an ordinary *inam*, is not an *unsettled jagir* within the meaning of s. 3 (*2*) (*c*) of the Estates Land Act, but an *inam*. When the inamdar subsequently to the grant, acquires the *kudivaràm* interest, the case comes under the exception in s. 8 of the Act, and the Civil Courts have jurisdiction in ejectment. SAM *v.* RAMALINGA MUDALIAR (1916) . . . . **I. L. R. 40 Mad. 664**

———— s. 3 (*2*) (d)—*Tanjore Palace Estate whether an "estate"—Inam—Resumability, not a test.* After the annexation of the Tanjore Raj, the British Government made an irresumable grant in inam in 1862 to the widows of the last Raja of Tanjore, of the revenue due on certain villages, commonly called the Tanjore Palace Estate, the *kudivaram* in which was vested in other persons, namely, the actual cultivating tenants of the village. *Held*, by the Full Bench, that the Tanjore Palace Estate was an "estate" within s. 3 (*2*) (*d*) of the Madras Estates Land Act (I of 1908). *Semble:* A grant to be an inam need not be resumable. *Sundaram Ayyar* v. *Deva Sankara Bhat*, Second Appeal No. 2661 of 1913, overruled. SUNDARAM AYYAR *v.* RAMACHANDRA AYYAR (1917) . **I. L. R. 40 Mad. 389**

———— ss. 3 (*7*) (*1*) and 6 (*1*)—*Definition of old waste—"At the time of letting," meaning of.* In a suit in 1910 by a landholder against a tenant who was holding over, for ejectment and damages under s. 153 of the Estates Land Act, it appeared that the land in question was not cultivated before 1901, that it was then leased to a stranger for cultivation for five years ending with June 1906 and that it was thereafter leased by the plaintiff to the defendants for three years ending with June 1909. The defendants contended that they had acquired occupancy rights under s. 6 (*1*) of the Estates Land Act. *Held*, (i) that the land was

ESTATES LAND ACT (MAD. I OF 1908)—*concld.*

——— **ss. 3 (7) (*l*) and 6 (*l*)**—*concld.*

ryoti land other than old waste within s. 6 (*l*) and (ii) that the defendants had acquired occupancy rights under s. 6 (*l*) of the Estates Land Act and were not liable to be ejected. *Held*, further, that the words "at the time of letting" in the definition of 'old waste' in s. 3 (7) (*l*) refer to the creation of the tenure which is in dispute. VENKATARATANM *v.* SRI RAJAH APPA RAO BAHADUR (1916) . **I. L. R. 40 Mad. 529**

——— **ss. 4, 27, 73, 143**—*Levy of fee (kanganam) for supervision of harvest, legality of—Right of landlord to enter land and make experimental harvest—Liability of tenant to pay compensation for loss of crops by theft of cattle—Liability to pay rent for fallow lands, in the absence of custom—Right of tenant to obstruct flow of rain water into the landlord's irrigation channel—Liability to pay wet rate when water insufficient—Remission of rent, legal right to.* Where the landlord is entitled to a share of the produce, the levy of a fee (called *kanganam*) by the landlord on the tenant for supervising the harvest in order to protect his interests is not illegal and it is not opposed to s. 73 or 143 of the Estates Land Act. *Devanai* v. *Raghunatha Row, (1913) Mad. W. N. 886 and Karri Peddi Reddy* v. *Receiver of Nidadavole and Medur Estates, 18 Mad. L. T., 171*, followed. A landholder entitled to a specific share of the produce, is not entitled to enter upon the land and make an experimental harvest of a small portion of the land with a view to throw on the tenant the burden of proving that the yield of the other portions was not equal to that of the experimental harvest. A landlord is not entitled to levy a fee (called *Panchamati*) as compensation for the loss caused to the crop by cattle, theft, etc., as the tenant is not an insurer and is not liable for acts beyond his control. *Raja Parthasarathi Appa Row* v. *Chevendra Chinna Sundara Ramayya, I. L. R. 27 Mad. 543*, followed. In the absence of a custom to charge rent for lands left fallow by the tenant, no rent is claimable in respect of such lands. S. 4 of the Estates Land Act should be read subject to s. 27 of the Act. *Segu Rowthen* v. *Alagappa Chetty, 26 Mad. L. J. 269, Arunachellam Chettiar* v. *Muthayanai Thevan, 26 Mad. L. J. 575* and *In re Arunachellam Chettiar, 2 Mad. L. W. 828*, followed. *Appalaswami* v. *Raja of Vizianagram, 25 Mad. L. J. 50*, distinguished. In the absence of a custom to that effect, a tenant owning dry land within the bed of an irrigation tank, has no right to obstruct the flow of rain water into the tank by putting up ridges on his land so as to retain for his cultivation the water so obstructed. If he so obstructs the flow of water, he is liable to pay the higher rate called *Sarasari* as for wet crops. A tenant is liable (*a*) to pay *Sarasari* wet rate, if he raises on his wet and dry crops when he can raise wet crops and (*b*) to pay only the usual dry rate, if he raises only dry crops owing to insufficiency of water. Remission of rent is a matter of grace and not of right. *Alagappa Chettier* v. *Tirunagavalli, 13 Mad. L. J. 377*, followed. ARUNACHALLAM CHETTIAR *v.* MANGALAM (1915).

I. L. R. 40 Mad. 640

ESTOPPEL.

See EVIDENCE ACT (I OF 1872), S. 115.
I. L. R. 41 Bom. 480

ESTOPPEL—*contd.*

See EVIDENCE ACT (I OF 1872), S. 116.
I. L. R. 40 Mad. 561

See LIMITATION ACT (IX OF 1908), S. 19.
I. L. R. 40 Mad. 701

See TITLE . **I. L. R. 44 Calc. 771**

See WAIVER . **I. L. R. 44 Calc. 10**

1. ——— *Judgment affirmed on Appeal—Second Appeal not decided on merits—"Finally decided"—British Baluchistan Regulation IX of 1896, s. 10.* The appellant, in pursuance of a deed of dissolution of partnership, executed a bond for the payment of a sum of money to the respondent. He sued to set aside the bond on the ground of fraudulent misrepresentation as to the amount due. The trial judge and, on appeal, the District Judge held that the alleged fraud was not established, and dismissed the suit. Upon a further appeal to the Judicial Commissioner it was held, without entering into the merits, that the appellant could not avoid the bond as he did not claim to avoid the deed. In a subsequent suit by the respondent upon the bond the appellant raised as a defence the same case of fraud: *Held*, that the issue raised by the defence was not *res judicata*, since the matter had not been "finally decided" within the meaning of s. 10 of the British Baluchistan Regulation IX of 1896. ASHGAR ALI KHAN *v.* GANESH DASS (1917) . . . **L. R. 44 I. A. 213**

2. ——— *Will by Hindu mother, in favour of daughter and then to son's son if any—Legate estopped from denying title of remainderman—Adverse possession, if any.* Where a Hindu mother purported to bequeath her husband's property to her daughter with a proviso that if male children should be born to her (testatrix's) son (who survived her) they should succeed to the whole estate, and the daughter entered into possession under the will and carried out all its provisions. In a suit brought by the purchaser from the son's son against the purchaser from the daughter's son: *Held*, (i) that the will was invalid because the testatrix had no interest of which she could dispose by will, and it further contained an ineffectual bequest to unborn grandsons; (ii) that the daughter (legatee) and her successor in title by her acceptance of the will were estopped from disputing the title of the son's son (remainderman); and (iii) that the principle that a person who accepts a position conferred on him or her by a will cannot at the same time repudiate so much of the will as conveys an interest to another person, governed the case. *Board* v. *Board, L. R. 9 Q. B. 48*, and *Rupchand Ghose* v. *Sarbessur Chandra Chander, 3 C. L. J. 629*, referred to. DURGA DAS KHAN *v.* ISHAN CHANDRA DEY (1916).

I. L. R. 44 Calc. 145

ESTOPPEL BY CONDUCT.

——— *Unregistered deed of exchange of two plots each worth more than Rs. 100—Conduct confirming the exchange, whether an estoppel in a suit to recover possession—Transfer of Property Act IV of 1882, ss. 51, 54 and 118—Compensation.* The plaintiff and the defendant exchanged adjacent plots of land each worth more than a hundred rupees by means of an unregistered deed on 4th March, 1908; both believing that they had effected a valid transfer.

ESTOPPEL BY CONDUCT—*concld.*

Possession was taken by each party and defendant began to erect a very costly building placing a wall thereof on the land he had acquired in exchange. While the building was in progress, the plaintiff demanded and obtained Rs. 525 from the defendant on the ground that the plot he parted with was found to be more in extent than the defendant's. After the completion of the building, the plaintiff brought this suit in 1911 for recovery of his plot after removal of the defendant's building on it. The defendant pleaded *inter alia* that he had acquired a valid title to the plot, that the plaintiff was estopped by his conduct from recovering the plot and that if the plaintiff was to get a decree, he must pay compensation as a condition of recovery. *Held*, on Letters Patent Appeal, by SADASIVA AYYAR and NAPIER, *JJ.* (ABDUR RAHIM, *J.*, dissenting) :—(i) that the plaintiff was not estopped and that he was entitled to recover his plot owing to the absence of a registered deed of exchange as required by ss. 54 and 118 of the Transfer of Property Act, and (ii) that the plaintiff must pay sufficient compensation before recovery, under s. 51 of the Transfer of Property Act. *Kurri Veerareddi* v. *Kurri Bapireddi, I. L. R. 29 Mad. 336*, followed. *Mahomed Musa* v. *Aghore Kumar Ganguli, I. L. R. 42 Calc. 801*, and *Venkayyamma Rao* v. *Appa Rao, I. L. R. 39 Mad. 509*, explained and distinguished. *Per* ABDUR RAHIM, *J.*—Plaintiff was estopped by his conduct from recovering his lot in spite of the want of a registered deed of exchange. *Per* SADASIVA AYYAR and NAPIER, *JJ.* The word 'transferee' in s. 51 of the Transfer of Property Act, includes also a transferee under an invalid transfer and the words 'the person causing the eviction' include a transferor under an invalid transfer. RAMANATHAN *v.* RANGANATHAN (1917). **I. L. R. 40 Mad. 1134**

ETIQUETTE OF THE BAR.

See BARRISTER . **I. L. R. 44 Calc. 741**

EVIDENCE.

See EVIDENCE ACT (I OF 1872).

See CIVIL PROCEDURE CODE (1908), O. XXVI, RR. 9, 16, 17, 18. **I. L. R. 39 All. 694**

See CUSTOM . **I. L. R. 39 All. 574**

See EVIDENCE ACT (I OF 1872), SS. 68, 69 . **I. L. R. 39 All. 109, 112, 241**

See ORAL EVIDENCE. **I. L. R. 41 Bom. 466**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54 . **I. L. R. 41 Bom. 550**

——— **onus of proof of, necessity—**

See HINDU LAW—ENDOWMENT. **I. L. R. 40 Mad. 402**

——— **sufficiency of, to prove necessity—**

See HINDU LAW—ENDOWMENT. **I. L. R. 40 Mad. 402**

1. ——— *Admissibility—Conversation between defendant and plaintiff's pleader when suit in contemplation, if admissible in evidence—Admission made by one defendant evidence against all others—Evidence Act (I of 1872), ss. 18, 23.* In a suit for rent, there was a talk of settlement between the plaintiff's pleader and one of the defendants when the suit was about to be instituted. *Held*, that the mere fact of the conversation taking place when the parties were contemplating that a suit might be instituted is not in itself sufficient to prevent the conversation from being put in evidence. *Wallace* v. *Small, (1830) Moo. & M. 446*, *Watts* v. *Lawson, (1830) Moo. & M. 447n*, *Nicholson* v. *Smith, 3 Starkie 128*, *Harding* v. *Jones, (1835) T. & G. 135*, and *Jorden* v. *Money, 5 H. L. C. 185*, relied on. *Mohabeer Singh* v. *Dhujjoo Singh, 20 W. R. 172*, discussed. When several persons are jointly interested in the subject-matter of a suit, an admission by one of them is receivable in evidence not only against himself, but also against the other defendants, whether they be all jointly suing or sued, provided that the admission relates to the subject-matter in dispute and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered. *Kowsulliah Sundari* v. *Dasi* v. *Makta Sundari Dasi, I. L. R. 11 Calc. 588*, *Chalho Singh* v. *Jharo Singh, I. L. R. 39 Calc. 995*, and *Ahinsa Bibi* v. *Abdul Kader Saheb, I. L. R. 25 Mad. 26*, referred to. *Kali Kisore Chowdhury* v. *Gopi Mohan Roy Chowdhury, 2 C. W. N. 166*, distinguished. MEAJAN MATBAR *v.* ALIMUDDI MIA (1916) . **I. L. R. 44 Calc. 130**

2. ——— *Admissibility—Conveyance—Intention to Mortgage—Third-party owner—Notice—Evidence Act (I of 1872), s. 92.* As between the parties to an absolute conveyance, s. 92 of the evidence Act (subject to its provisos) procludes the giving of oral evidence to prove that the transaction was intended to be a mortgage. The section, however, applies only as between the parties. Where, therefore, the grantee takes knowing that a third person is the owner of the property and the grantor is only a mortgagee, and that the intention a fall parties is merely to transfer the mortgage, oral evidence is admissible to prove the real nature of the transaction. *Semble :* that a claim by the grantee to be owner under those circumstances is fraudulent, and if s. 92 applied oral evidence would be admissible under that proviso. *Achutaramaraju* v. *Subbaraju, I. L. R. 25 Mad. 7*, *Maung Bin* v. *Ma Hlaing, 3 L. B. R. 100*, and *Dattoo valad Tataram* v. *Chandra Tataram, I. L. R. 30 Bom. 119*, approved. *Baksu Lakshman* v. *Govinda Kanji, I. L. R. 4 Bom. 594*, and other decisions, disapproved. MAUNG KYIN *v.* MA SHWE LA (1917). **L. R. 44 I. A. 236**

3. ——— *Mortgage-deed, form of proof of—Evidence Act (I of 1892), ss. 68 to 71.* In a suit on a mortgage bond, the admission of execution by the sole mortgagor does not dispense with the necessity of complying with the provisions of s. 68 of the Evidence Act in order to prove the execution of the document as against other parties in the suit who do not admit such execution. Such a document must be proved as against them in accordance with the provisions of ss. 68, 69 and 71 of the Evidence Act. *Jogendra Nath Mukhopadhya* v. *Nitai Churn Bundopadhya 7 C. W. N. 384*, distinguished. SATISH CHANDRA MITRA, *v.* JOGENDRA NATH MAHALANABIS (1916). **I. L. R. 44 Calc. 345**

EVIDENCE—*concld.*

4. ——————— party in possession of written evidence on material issue not justified in withholding it on the plea of onus of proof being on his opponent. T. S. MURUGESAM *v.* MANICKAVASAKA (1917) . . **21 C. W. N. 761**

5. ——————— *Relevancy of judgment—Trial of accused for criminal breach of trust of certain amounts—Judgment in a civil case between the parties as to the amounts—Admissibility of the judgment into the criminal proceedings.* The applicant was prosecuted for criminal breach of trust with reference to certain items. There was a civil suit between the complainant and the applicant regarding items which included the items involved in the criminal case. The civil suit was decided in applicant's favour. He thereupon applied to admit the judgment in evidence in the criminal case, and on the strength of it prayed for an order of discharge. The Magistrate having refused to admit it in evidence the applicant applied to the High Court. *Held,* that the judgment of the Civil Court was admissible in evidence, inasmuch as it would be relevant and important to know what the rights of the parties were, as determined by the civil Court, with respect to the items charged against the applicant. MARKUR, *In re* (1914).

I. L. R. 41 Bom. 1

6. ——————— *Unregistered deed—Admissibility of deed for collateral purposes—Joint owners—Adverse possession.* One of two brothers, joint owners of certain immovable property, executed a deed of relinquishment in favour of the other. The deed was never registered, but the brother in whose favour it was made remained in possession of the entire property. *Held,* that the deed of relinquishment was admissible in evidence to prove the nature of the occupant's possession, and that there was no legal impossibility about one co-owner claiming adverse possession as against the other. JHAMPLU *v.* KUTRAMANI, (1917) . . . **I. L. R. 39 All. 696**

EVIDENCE ACT (I OF 1872).

——— **ss. 11, 14, 15**—*Evidence—Admissibility of evidence of similar but unconnected transactions in which the accused were concerned—Penal Code (Act XLV of 1860), s. 420—Cheating.* *S., Y* and *W* were charged with having cheated *B* and *P* and thereby obtained from them various sums of money. The mode adopted by the accused was as follows: *S,* representing himself to be a broker, introduced *B* and *P,* who wanted to borrow money, to *Y* and *W,* as being the agents of a wealthy lady of the name of Akbari Begam, and a story was told them that Akbari Begam had a large amount of a ready money which she was willing to lend on very favourable terms. Negotiations were commenced, and extended over a considerable period, in the course of which *B* and *P* were induced to part with various small sums of money for preliminary expenses. Ultimately the negotiations fell through, and it was discovered that they had been fraudulent from beginning to end. The accused's defence was, broadly, that, while admitting that *B* and *P* had paid them the sums of money in questions, the payments were made in circumstances totally different from those alleged by the prosecution. They denied that they had ever said that there was such a person as Akbari

EVIDENCE ACT (I OF 1872)—*contd.*

——— **ss. 11, 14, 15**—*concld.*

Begam, and, *a fortiori,* that they had ever represented themselves as her servants or agents: *Held,* that on the case for the prosecution evidence was admissible that the same three persons had on other occasions proposals made of much the same kind to other persons to whom they told a story similar in all essential particulars down to the name of the proposed lender of the money. *King-Emperor* v. *Abdul Wahid Khan, I. L. R. 34 All. 93,* and *Emperor* v. *Debendra Prosad, I. L. R. 36 Calc. 573,* referred to. EMPEROR *v.* YAKUB ALI (1916) . **I. L. R. 39 All. 273**

——— **ss. 18, 23**—

See EVIDENCE . **I. L. R. 44 Calc. 130**

——— **ss. 18, 32** (*3*)—*Draft record-of-rights, entry in, admissibility of—Recital in conveyance executed by some defendants, if admissible against defendants other than the executants—Reception of inadmissible evidence, if vitiates judgment arrived at independently thereof—Omission to object to irrelevant evidence, effect of—Court, if will entertain objection first taken in appeal as to improper admission of document not per se inadmissible—Ss. 153 (3), 157.* The plaintiffs sued for recovery of possession of a tank on declaration of title alleging that it had been excavated by their ancestor long ago after whom it was known and it had been in their possession all along till dispossession by the defendants. The lower Appellate Court in decreeing the suit relied on (*1*) an entry in a draft record-of-rights (which was omitted in the record finally published) that the tank was known by the name of plaintiff's ancestor, (*2*) a recital in a conveyance of sale of an adjoining piece of land executed by some of the defendants (who at the time of the conveyance had acquired no interest in the land in suit) in favour of a stranger to the effect that the land was bounded by the tank known after the ancestor of the plaintiffs. The conveyance was duly proved and admitted in evidence without objection: *Held,* that the entry in the draft record-of-rights was not admissible in evidence but this did not vitiate the judgment of the lower Appellate Court which arrived at the conclusion on the merits independently of the evidence improperly admitted. That the recital in the conveyance though admissible against the makers of the conveyance was not admissible as admissions against the other defendants under s. 18 of the Indian Evidence Act nor was it admissible under s. 32 (*3*) of the Evidence Act, the conditions mentioned in the introductory words of the section not having been fulfilled. That principle which regulates the reception in evidence of an admission by one defendant against another is that when several persons are jointly interested in the subject-matter of the suit an admission of any one of these persons is receivable not only against himself but also against the other defendants whether they be all jointly suing or sued provided that the admission relates to the subject-matter in dispute and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered. The requirements of the identity in legal interest between the joint owners is of fundamental importance and the joint ownership must have existed at the time

EVIDENCE ACT (I OF 1872)—*contd.*

——— ss. 18, 32 (3)—*concld.*

the statement was made. That if the plaintiff had cited the defendants who were the executants of the *kobala* as witnesses, the recital could have been received in evidence to impeach their credit under s. 155 (*3*) or to corroborate their testimony under s. 157 of the Evidence Act and was not *per se* inadmissible. That an erroneous omission to object to evidence which is irrelevant and consequently inadmissible under any circumstances does not make it admissible but the Court will not entertain for the first time in appeal an objection that a document which *per se* is not inadmissible in evidence has been improperly admitted in evidence. On this principle the High Court declined to set aside the judgment of the lower Appellate Court. AMBAR ALI *v.* LUTFE ALI (1917) . . **21 C. W. N. 996**

——— s. 26—*Statement to Excise Officer after arrest effected with help of police sergeants when such sergeants present in the house searched though not in the room where statement made, if a statement made in police custody, and if admssible—Protracted trial, evils of.* Where in a case under s. 9 of the Opium Act it appeared that two police sergeants accompanied the Excise Officer and assisted him in raiding a house and arresting the appellant and were in the house as part of the force in charge of the prisoners although they were not present in the room in which the appellant made certain statements to the Excise officer: *Held*, that the appellant was to be regarded as having been in police custody for the purpose of s. 26 of the Evidence Act and the statements were inadmissible. Protracted trial in the Presidency Magistrate's Court animadverted on. IBRAHIM MUHAMAD *v.* KING-EMPEROR (1917) . . . **21 C. W. N. 694**

——— s. 32, sub-s. (3)—

See HINDU LAW—JOINT FAMILY PROPERTY . . **L. R. 44 I. A. 201**

——— ss. 32, (3), 48—

See CUTCHI MEMONS.

I. L. R. 41 Bom. 181

——— s. 32 (5)—*Evidence of relationship—Statement made in a plaint filed by a member of the family since deceased—Second appeal—Finding of fact.* In a suit to recover possession of property which had belonged in her life-time to one Musammat Fiddo, one of the material issues was whether the plaintiffs were or were not the sons of one Munir Khan, paternal uncle of Musammat Fiddo. In support of their statement that they were the sons of Munir Khan the plaintiffs tendered in evidence the plaint in a suit, filed some years *ante litem motam*, in which Musammat Fiddo as plaintiff had impleaded them as defendants, describing them as the sons of Munir Khan. *Held*, that this plaint was not only admissible evidence on the subject of the plaintiffs' relationship to Munir Khan, but was evidence to which considerable weight might be attached. The High Court, however, in second appeal, is not concerned with the quantum of evidence upon which a finding of fact come to by a Court of first appeal is based. So long as there is legally admissible evidence to support the finding of the court below, the High Court cannot interfere with it. *Coghlar* v. *Cumberland, L. R. 1 Ch. D. 704*, referred to. MAULADAD KHAN *v.* ABDUL SATTAR (1917) . . **I. L. R. 39 All. 426**

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 32 (5)—*concld.*

——— s. 35—

See HINDU LAW—REVERSIONERS.

I. L. R. 40 Mad. 871

——— s. 44—*Right of a stranger to a decree affecting his rights to show in a subsequent suit that the decree was invalid on the ground of fraud—Maintainability of such subsequent suit without previous suit to have decree set aside.* If by virtue of a previous High Court decree a person, who is no party to that decree, is deprived of his rights with respect to certain property, a suit by such a person with respect to the property is maintainable without his having first to bring another suit for getting the decree set aside on the ground of fraud; under s. 44 of the Evidence Act he can impeach it if it is sought to be used against him as evidence. ASWINI KUMAR SAMADDAR *v.* BONOMALY CHAKRAVARTI (1916).

21 C. W. N. 594

——— ss. 68, 69—

1. ——— *Evidence mortgage-deed—Proof of mortgage-deed after death of executant and marginal witnesses. Held*, that the executant of and all three marginal witnesses to a mortgage-deed being dead, a mortgage-deed was sufficiently proved by evidence that the signature of the mortgagor was in his handwriting and that the signatures of two of the marginal witnesses were in their hand writing. By such evidence a presumption of due execution was raised which it lay on the defendants to rebut. *Wright* v. *Sanderson, L. R. 9 P. D. 149*, referred to. UTTAM SINGH *v.* HUKAM SINGH (1916).

I. L. R. 39 All. 112

2. ——— *Evidence—Mortgage—Proof of mortgage-deed.* A mortgage-deed on the face of it appeared to be attested by a large number of witnesses. In a suit upon the bond the mortgagee called one attesting witness who proved that he saw the mortgagor sign the mortgage and that he himself signed his name as an attesting witness. The other witnesses were not called, nor did the witness who was called say that any other attesting witness was present, nor wax he asked the question by either side. *Held*, that, in the absence of any rebutting evidence, the mortgage-deed must be considered to be sufficiently proved. *Uttam Singh* v. *Hukam Singh, I. L. R. 39 All. 112*, referred to. SHIB DAYAL *v.* SHEO GHULAM (1916).

I. L. R. 39 All. 241

3. ——— *Transfer of Property Act (IV of 1882) s. 59—Proof of execution—Document proved have been executed in the presence of one attesting witness who was examined.* One of the attesting witnesses to a mortgage deed was dead. The other attesting witness was called and proved that the mortgage deed was signed by the mortgagor in his presence and that he signed the deed as an attesting witness. It was not expressly proved that there was another attesting witness present who saw the mortgagor sign, but it was not proved to be contrary that there was not another attesting witness. *Held*, that the mortgage was sufficiently proved according to the requirements of ss. 68 and 69

EVIDENCE ACT (I OF 1872)—*contd.*

——— ss. 68, 69—*concld.*

of the Indian Evidence Act. RAM DEI *v.* MUNNA LAL (1916) . . **I. L. R. 39 All. 109**

——— ss. 68 to 71—

See EVIDENCE . **I. L. R. 44 Calc. 345**

——— s. 91—*Hindu Law—Partition—Partition evidenced by a writing not registered—Oral evidence admissible to prove the fact of partition.* The fact of partition may be proved by oral evidence although the deed embodying the terms of partition cannot be proved for want of registration. CHHOTALAL ADITRAM *v.* BAI MAHAKORE (1917) . . . . **I. L. R. 41 Bom. 466**

——— s. 92—

See CONTRACT ACT (IX OF 1872), SS. 1, 118 . . **I. L. R. 41 Bom. 518**

See EVIDENCE . **L. R. 44 I. A. 236**

——— *Mortgage with possession—De facto substitution of the other property for part of that included in the mortgage-deed—Suit for redemption—Evidence.* The plaintiff mortgaged to the defendants three specific items of property for a sum of Rs. 99. The mortgage was registered, and it was a possessory mortgage, but the defendants never in fact got possession of more than one of the items mentioned in the deed. They did, however, get possession as mortgagees of another piece of property not mentioned in the deed, apparently by virtue of a subsequent oral agreement with the plaintiff, and they held this piece of property in mortgagee possession for a number of years: *Held*, on suit by the plaintiff for redemption, that the plaintiff was entitled to lead evidence to prove two facts: (i) that the possession of the defendants over the plot not mentioned in the mortgage deed was that of mortgagees and had never been adverse to himself and (ii) that the right of mortgagee possession was terminated by the payment of Rs. 99 which had been duly tendered by him. BAID RAM *v.* TIKA RAM (1917).

I. L. R. 39 All. 300

——— s. 92, pro. 6, and ss. 93 and 95 to 97—*Deed of setilement, construction of—Subsequent conduct of parties to the instrument, whether admissible in evidence—Execution proceedings—Res judicata—Notice of particular questions, necessily for—Application for execution—Order at one stage of the application, if res judicata at another stage.* Where, by a Deed of Settlement, almost the whole of the settlor's immovable property was transferred to trustees together "with buildings and appurtenances thereto" and the question was raised as to whether certain specific properties were included in the deed: *Held*, that the ambiguity in the deed, being latent, in construing the deed the subsequent conduct of the parties thereto, can be legitimately looked into under s. 92, proviso 6 of the Evidence Act for the purpose of ascertaining to what persons or things the expressions used therein were intended to apply. *Tulshi Pershad Singh* v. *Ramnarain Singh, I. L. R. 12 Calc. 117, Venkataramanna* v. *Venkatapathi, 28 Mad. L. J. 510, Forves* v. *Watt, 2 Sc. & D. App. 214,* and *Van Diemen's Land Company* v. *Table Cape Marine Board,* [*1906*] *A. C. 92,* referred to. *Vissanji Sons & Co.* v. *Shapurji Burjorji, I. L. R. 36 Bom. 387, 395,* explained. A decree-holder applied for execution of his decree by attachment and sale of certain properties in the possession of the respondents, the sons of the deceased judgment-debtor. Notice went to the respondents to show cause why they should not be brought on the record as the legal representatives of the deceased judgment-debtor for purposes of execution; they did not appear and an order was made *ex parte*. *Held*, that they were not estopped by this order from moving to set aside the attachment on the ground that the properties did not belong to the judgment-debtor. Observations as to the application of the principle of *res judicata* to orders in execution. SUBRAMANIA AYYAR *v.* RAJA RAJESWARA DORAI (1916).

[I. L. R. 40 Mad. 1016

EVIDENCE ACT (I OF 1872)—*concld.*

——— s. 92—*concld.*

——— s. 115—*Estoppel—Minor included in "person"—Minor passing himself off as a major is bound by his contract—Sale of house.* The plaintiff purchased a house from defendant No. 2 who was not clearly a minor in appearance and who represented to the plaintiff and caused her to believe that he was a major. In a suit by the plaintiff, to recover possession of the house, defendant No. 2 pleaded his minority:—*Held*, negativing the plea, that defendant No. 2 being "a person" within the contemplation of s. 115 of the Indian Evidence Act, 1872, and having by direct declaration intentionally caused the plaintiff to believe that he was a major, was precluded absolutely from denying the truth of that assertion. *Ganesh Lala* v. *Bapu I. L. R. 21 Bom. 198,* followed. DADASAHEB DASRATHRAO *v.* BAI NAHANI (1917).

[I. L. R. 41 Bom. 480

——— s. 116—*Estoppel—Landlord and tenant—Tenant not let into possession by the landlord—Whether estopped from denying the landlord's title to the property. Held* by the Full Bench (SESHAGIRI AYYAR and PHILLIPS, *JJ.*, ABDUR RAHIM, Offg. *C. J.*, dissenting), that a tenant who has executed a lease but has not been let into possession by the lessor is estopped from denying his lessor's title in the absence of proof that he executed the lease in ignorance of the defect in his lessor's title or that his execution of the lease was procured by fraud, misrepresentation or coercion. *Per* ABDUR RAHIM, Offg. *C. J.*—A tenant who was let into possession is estopped from denying a landlord's title. A tenant who was not let into possession by the person seeking to eject him, is not estopped from denying the plaintiff's title; he may show that the title is in some third person or in himself. But the execution of a lease or payment of rent by the defendant is *primâ facie* proof of the plaintiff's title which the Court dealing with the evidence will ordinarily treat as conclusive in his favour unless the fact is sufficiently explained. In most cases of this nature the presumption in favour of the plaintiff can only be displaced by the defendant showing that the attornment was made by him in ignorance of the plaintiff's title or was induced by fraud, misrepresentation or coercion. VENKATA CHETTY *v.* AIYANNA GOUNDAN (1916).

I. L. R. 40 Mad. 561

EXAMINATION.

See INSOLVENCY **I. L. R. 44 Calc. 374**

EXECUTING COURT.

——— competency of, to enquire into title of transferee—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 2 (*3*).
I. L. R. 40 Mad. 296

EXECUTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 60 (*c*).
I. L. R. 41 Bom. 475

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 144 . **I. L. R. 41 Bom. 625**

——— application for—

See EVIDENCE ACT (I OF 1872), S. 92, PRO. 6 AND SS. 93 AND 95 TO 97.
I. L. R. 40 Mad. 1016

——— application for, defective—

See LIMITATION ACT (IX OF 1908) SCH. I, ART. 182, CL. (*5*).
I. L. R. 40 Mad. 949

——— purchaser in, rights of—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 67 . **I. L. R. 40 Mad. 77**

——— transmission of decrees to Courts of Native States—

See EXECUTION *infra*.
I. L. R. 40 Mad. 1069

——— *Limitation—Application to transmit a decree of a British Court to a Travancore Court, whether an execution application or a step in aid of execution—Issue of notice on such application, whether affords a fresh starting point, under Art. 182, cl. (6)—Limitation Act (IX of 1908), Art. 182, cl. 5—Power of British Courts to send their decrees for execution to Courts of Travancore State—Civil Procedure Code (Act V of 1908), s. 45, effect of.* Held by the Full Bench: (i) that in the absence of any provision to that effect in the Civil Procedure Code, Courts in British India have no power to send their decrees for execution to the Courts in Travancore but may and should send to these Courts the documents they require to enable them to execute these decrees under the powers conferred upon them by the legislative authority in Travancore; (ii) that the execution contemplated by the Civil Procedure Code and Art. 182 of the Limitation Act being execution by British Courts in India on application made to such Courts, an application to a British Court in India to send a decree of such Court for execution to a Court of Travancore is neither an execution application nor a step in aid of execution within Art. 182, cl. (*5*); and (iii) that the issue of a notice to the judgment-debtor on any such application to show cause why the decree should not be transmitted to a Travancore Court does not give a fresh starting point under Art. 182 (*6*), as no such notice is required by the Civil Procedure Code to be issued as a preliminary for execution by the Travancore Court. PIERCE LESLIE & CO., LTD., COCHIN *v.* PERUMAL (1917) . **I. L. R. 40 Mad. 1069**

EXECUTION APPLICATIONS.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 144 AND 11, EXP. IV, AND 47, O. II, R. 2.
I. L. R. 40 Mad. 780

EXECUTION OF DECREE.

See EXECUTION SALE.

See CIVIL PROCEDURE CODE, 1908, SS. 47 52 . . . **I. L. R. 39 All. 47**

See CIVIL PROCEDURE CODE (1908), S. 60 . . **I. L. R. 39 All. 308**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 66 **I. L. R. 39 All. 415**

See CIVIL PROCEDURE CODE (1908), O. XXI, RR. 92, 93.
I. L. R. 39 All. 114

See CIVIL PROCEDURE CODE, 1908), O. XXXIV, R. 14.
I. L. R. 39 All. 36

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 29, 36, 120.
I. L. R. 39 All. 322

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182 (*7*).
I. L. R. 39 All. 230

See MORTGAGE . **I. L. R. 39 All. 67**

See RES JUDICATA **I. L. R. 39 All. 379**

——— application for—

See CIVIL PROCEDURE CODE ACT (V OF 1908), O. XXI, R. 2 (*3*).
I. L. R. 40 Mad. 296

1. ——— *Decree temporarily satisfied, effect on limitation.* An *ex parte* decree was obtained against two persons, the appellant and one *S*. The decree was executed against *S* by the sale of whose moveables the whole decree was satisfied. On a suit by *S* the decree as against him was set aside and the money realised from him was ordered to be refunded. The decree-holder then applied for execution against the Appellant: *Held*, that the order directing refund by the decree-holder to *S* in effect reopened the execution proceedings and the application for execution against the appellant must be treated as a continuation of the original application for execution which was brought within time. KERAMAT ALI *v.* NAGENDRA KISHORE RAY (1916) . . . . . **21 C. W. N. 571**

2. ——— *Limitation—Decree conditional on money being paid into Court "within thirty days of the decree becoming final"—Interpretation of condition.* Where a decree was passed in favour of a plaintiff, conditional on his depositing a sum of money into Court "within thirty days of the decree becoming final," it was *held* ing a sum of money into court "within thirty days of the decree becoming final," it was *held* that this did not signify merely the bare period of limitation for an appeal but included also the time necessary for obtaining the requisite copies. BHAGELU SALU *v.* RAM AUTAR SHUKUL (1916).
I. L. R. 39 All. 193

3. ——— *Objection to execution of decree—dismissed for default—Fresh objection, if lies before order of dismissal is set aside—Civil Procedure Code (Act V of 1908), r. 9, O. IX, applicability of—Inherent power of Court to review order of dismissal.* Where an objection to the execution of a decree is dismissed for default the order of dismissal is binding until it is set aside and the judgment-debtor cannot ignore it and file a fresh objection. R. 9, O. IX, does not

EXECUTION OF DECREE—*contd*

apply to such a case but the Court has inherent power on a proper application being made to review the order and to enquire whether the objector had or had not a reasonable case for not appearing on the date appointed for the hearing of his petition. BHARAT CHANDRA NATH *v.* IASIN SARKAR (1917) . **21 C. W. N. 769**

4. ——— *Execution of decree by instalments—Limitation—Petition of compromise—Decree—"Application in accordance with law"—Civil Procedure Code (Act V of 1903), O. XXI, r. 17—Limitation Act (IX of 1908), Art. 182, cls. (5) and (7)—Instalment decree—Default.* Where in a suit against five persons for recovery of monies due on a handnote separate compromise petitions for instalment decrees were filed on the 1st July 1911 in which there was a provision that default being made in the payment of one *kist*, the whole amount would become due, and subsequently on the 10th July 1911, one instalment decree was passed against all the five defendants in which separate amounts were decreed against each defendant to be paid as per instalments provided therein, but in which the condition as to the whole amount being due in default of the payment of one *kist* was not stated; and an application for execution of the whole decree having been made on the 10th July 1914 against all the five defendants it was dismissed on the 20th February 1915 on the ground that the prayer for execution was not in accordance with the terms of the decree; and subsequently the present application for execution of the decree for the *kists* from January 1911 to September 1915 was made on the 10th November 1915 against defendant No. 2 alone and it was dismissed by the lower Court on the ground that the decree was barred by limitation: *Held*, that in order to properly understand what the decree was, the Court was entitled to look at and consider the terms of the compromise and was not bound to take the decree by itself; that the application for execution dated the 10th July 1914 having been rejected under O. XXI, r. 17, sub-r. (*1*) as not being an application in accordance with law, did not save limitation; that the whole decree became due on the default of the payment of one *kist*, and the decree-holder had no option to recover the decretal amount in accordance with the *kists* and his present application for execution of the decree dated the 10th November 1915 was barred by limitation. JAYANUDDIN KHAN *v.* JAMIRUDDIN SARKAR (1917) . **21 C. W. N. 835**

5. ——— *Procedure—Practice—Rival decree-holders—Assets in the hands of Registrar—Attachment of fund with Accountant-General—Anticipatory attachment—Priority—Rateable distribution—Civil Procedure Code (Act V of 1908), s. 73; O. XXI, r. 52.* A question of rateable distribution under s. 73 of the Code of Civil Procedure of 1908 arises amongst creditors where the application for execution has been made before the receipt of assets. O. XXI, r. 52, does not allow of an anticipatory attachment of money expected to reach the hands of a public officer and is restricted only to money actually in his hands. Where a fund in Court has been attached by several creditors of the judgment debtor, none of the attaching creditors is entitled to preferential treatment by reason of the priority of his attachment; as the attachments create no

EXECUTION OF DECREE—*concld.*

charge or lieu upon the fund, so long as the fund is in the custody of the Court is bound to apply the rules of justice, equity and good conscience in the determination of the relative rights of the creditors who wish to proceed against the fund in *custodia legis* for the satisfaction of their dues. In such circumstances, the fund, if sufficient to meet in full the claims of the creditors, should be rateably distributed amongst them. THAKURDAS MOTILAL *v.* JOSEPH ISKENDER (1917).

I. L. R. 44 Calc. 1072

EXECUTION PROCEEDINGS.

——— *Enforceability in, of ante-decree agreement as to manner of execution of the decree—Civil Procedure Code (Act V of 1908), O. XXI, r. 2, no bar by—Rule of stare decisis, applicability of, to matters of procedure. Held by* the Full Bench (PHILLIPS, *J.*, dissenting), that an agreement between the plaintiff and the defendant made prior to the passing of a decree in the suit, to the effect that the defendant should not press his defence but allow a decree to be passed for the full amount of the suit, that the defendant should make an arrangement for the satisfaction of the decree within a certain time after the decree and that the plaintiff should not execute or transfer the decree before that time is one that can be pleaded in proceedings taken in execution of the decree. *Per* ABDUR RAHIM, Offg. *C. J.*, and SESHAGIRI AYYAR, *J.*—The uniform practice of this Court has been to allow such defence to be raised in execution instead of allowing it to be made the subject of future litigation. *Per* PHILLIPS, *J.*—Such a plea ought not to be allowed in execution proceedings as the executing Court cannot go behind the decree but must execute the decree as it stands and as the allowance of such pleas will lead to an abuse of process of Court enabling parties to obtain collusive decrees. The rule of *stare decisis* is not applicable in such cases, for no rights are taken away but only the method of enforcing them is changed. *Held*, further by the Full Bench that such an agreement is not obnoxious to O. XXI, r. 2, Civil Procedure Code, as that rule relates to agreements after the passing of a decree. CHIDAMBARAM CHETTIAR *v.* KRISHNA VATHIYAR (1916).

I. L. R. 40 Mad. 233

EXECUTION SALE.

1. ——— *Execution Sale proceeding—Order directing writ of attachment to issue, effect of—Objection that execution was then time-barred, if may be taken in subsequent proceedings—Necessity of proving non-service of notice—Onus—Entry in order-sheet that notice was served, value of.* An order made at one stage of execution proceedings cannot be questioned at a later stage unless the parties sought to be bound by such order had no notice of the proceedings. An order directing a writ of attachment to issue is in substance a determination that the decree was on the date of the order alive and capable of execution. An entry in the order-sheet that notice has been served does not constitute conclusive evidence of the *factum* of service, but there is no presumption that the entries are false and a judgment-debtor who alleges that the notice stated in the order-sheet in a previous execution proceedings to have been served on him was in fact not served must start his case.

EXECUTION SALE—*contd.*

Other cases where the burden has been placed on parties relying on due service to prove such service distinguished. BINDU BASHINI DASHYA *v.* KESHAB LAL BOSE (1916) . **21 C. W. N. 945**

2. ——— *Application to set aside execution sale—Destruction of record by fire—Presumption that official act was regularly performed—Rebutial—Copies of proclamations alleged to have been served on the locality found on appeal by High Court to be obviously concocted—Failure of purchaser's pleader to support their genuineness and consequent admission that sale was illegal—Reversal of Trial Court's finding by High Court—Statement in judgment as to pleader's admission, if may be challenged.* The record of the service of sale proclamations having been destroyed by fire, an application to set aside the sale was disposed of on other evidence. The burden of disproving the *primâ facie* presumption that official acts were rightly carried out lying on the applicants, the evidence necessarily of a negative character was held by the trial Court which saw the witnesses as untrustworthy. The purchaser on the other hand having adduced positive evidence of service, the trial Court found that the sale had been properly held and dismissed the application. On appeal, the High Court scrutinised certain copies of sale proclamations which were produced in the trial Court to prove service, and which, it was alleged, had been fixed on the various properties sold but which had no sign whatever of exposure to sun or rain, and the matter being put by the Court to the pleader for the purchaser, he was unable to answer these criticisms and admitted that he could not oppose the application to set aside the sale. The High Court thereupon held that the whole story of the service of sale proclamations was false and decreed the appeal. *Held* by the Judicial Committee, that though the actual documents exhibited related to some of the properties only, the fact that these were concocted destroyed the whole fabric of the story put forward on behalf of the purchaser, and it was only right that he should be associated with the scheme of deceit which it was designed to carry out and that such association should be regarded as an important element in determining whether his defence was honest and just. That the suggestion that the Judges of the High Court might have misunderstood the conduct of the pleader could not be entertaining in the absence of anything showing that the pleader called the attention of the Court to the fact that the statement in the judgment regarding his conduct was wrong while the matter was still fresh in the minds of the Judges and an affidavit filed before the Judicial Committee long afterwards by a person who said he was present at the trial and that the pleader made no admission as stated and that the pleader was unable to recall at its date whether in fact he made the admission or not was wholly insufficient to prove that the statement in the judgment was erroneous. MADHU SUDAN CHOWDHRI *v.* CHANDRABATI (1917). **21 C. W. N. 897**

3. ——— *Proceeding, order in execution sale not reviewed or appealed against—Fresh application to set aside order, if lies, when order erroneous but within jurisdiction—Civil Procedure Code Act (V of 1908), ss. 128, 157—Rules delegating judicial functions to ministerial officer,*

EXECUTION SALE—*concld.*

ultra vires under old Code, if validated by amended Code, without fresh promulgation. An order which is passed without jurisdiction is a nullity, which may be disregarded and need not be set aside. But an erroneous order made by a Court having jurisdiction can only be set aside by review or appeal. An order having been made in execution proceedings, and application does not lie to set aside the order on the ground that at the time the order was made the execution was barred. Such an order can only be set aside by review or appeal. *Quære:* Whether the Civil Procedure Code of 1908 by s. 128 (i) which allows delegation of judicial duties validates rules which were in existence previous to the Code of 1908 when such delegation was *ultra vires*. CHUTTERPUT SINGH *v.* SADASOOK KOTARY (1917) . **21 C. W. N. 1052**

EXECUTORY CONTRACTS.

——— **English rule, applicability of—**

See CONTRACT ACT (IX OF 1872), S. 73.
I. L. R. 40 Mad. 338

EX-PARTE CASE.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 44 Calc. 573

——— **reinstatement of—**

See MORTGAGE . **I. L. R. 44 Calc. 388**

EX-PARTE DECREE.

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13 . . **I. L. R. 39 All. 13**

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13; O. XVII, R. 3.
I. L. R. 39 All. 143

——— *Decree setting aside ex-parte decree, effect of—Court if bound to revive and proceed with trial of suit.* Where an *ex parte* decree is set aside by a Court of competent jurisdiction the effect is that the decree whereby the suit was terminated stands cancelled and the suit remains on the file of the Court as an undisposed of suit. In these circumstances it is incumbent upon the Court to proceed with the trial of the suit and if the plaintiff does not wish to proceed with the trial of the suit the Court must dismiss it but if the plaintiff desires to proceed with it, it must be tried in accordance with law. The fact that the suit terminated in an *ex parte* decree and not a consent decree makes no difference in point of principle. DHARANIDHAR ADITYA *v.* HEMANGA CHANDRA JAINA 1917) . . . . . **21 C. W. N. 1037**

EX-PARTE ORDER.

See LIMITATION . **L. R. 44 I. A. 218**

EXPERT EVIDENCE.

——— **in proof of custom—**

See CUTCHI MEMONS.
I. L. R. 41 Bom. 181

EX-PROPRIETARY RIGHTS.

See NORTH WEST PROVINCES RET ACT (XII OF 1881).
I. L. R. 39 All. 645

——— **agreement to surrender—**

See AGRA TENANCY ACT (II OF 1901), SS. 10, 20, 83 . **I. L. R. 39 All. 173**

EX-PROPRIETARY TENANTS.

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), S. 36.
I. L. R. 39 All. 318

EXTENSION OF TIME.

See DECREE . **I. L. R. 44 Calc. 954**

F

FALLOW LANDS.

See ESTATES LAND ACT (MAD. I OF 1908), SS. 4, 27, 73, 143.
I. L. R. 40 Mad. 640

FALSE CHARGE.

See PENAL CODE (ACT XLV OF 1860), S. 211 . . **I. L. R. 39 All. 715**

FALSE DEFENCE.

———— **in suit against vakil—**

See PROFESSIONAL MISCONDUCT.
I. L. R. 40 Mad. 69

FALSE INFORMATION TO POLICE.

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 650

FARIAHS.

See JUTE . . **I. L. R. 44 Calc. 98**

FEES.

———— **return of—**

See BARRISTER . **I. L. R. 44 Calc. 741**

FEMALES.

———— **right of, to inherit religious office—**

See HINDU LAW—SUCCESSION.
I. L. R. 40 Mad. 105

FESTIVAL.

———— **right to perform, in a Temple—**

See HINDU LAW—CUSTOM.
I. L. R. 40 Mad. 1108

FINDING OF FACT.

See EVIDENCE ACT (I OF 1872), S. 32 (*5*).
I. L. R. 39 All. 426

———— ———— *Finding, whether of fact or law, difficulty in determining—Exclusion of joint family, finding as to, if may be finding of law.* It is not always an easy matter to separate a finding of fact from a question of law. It may often be open to argument that the materials which have been accepted by one Court as establishing a certain conclusion were not in themselves sufficient for its support, if their legal weight had been properly measured and ascertained. A question of what constitutes exclusion from a joint estate may well, in many cases, be a question of law: *Held,* however, in this case, that the concurrent findings of the lower Courts were findings of fact and there were no reasons for reversing their findings. SHYAMANANDA DAS PAHARAJ *v.* RAM KANTA DAS (1917).
21 C. W. N. 1142

FISHERY.

———— *Right of owner of fishery in river to follow it when it changes its course.*

FISHERY—*concld.*

The solution of the question whether the owner of a fishery in a river is entitled to follow it when it changes its course depends mainly on whether or not the invading river has lost its identity. It is impossible to prescribe any hard and fast rule for the purpose of ascertaining the conditions in which the river may be said to have lost its identity. The decision of the Privy Council in *Srinath Roy* v. *Dinabandhu Sen, I. L. R. 42 Calc. 489 : s.c. 18 C. W. N. 1217,* is confined to cases where the river made for itself a new channel where none existed. SARADA PRASAD RAY CHAUDHURY *v.* MUHAMAD YUSUF (1916).
21 C. W. N. 1007

FITNESS OF SURETY.

———— **grounds of—**

See SURETY . **I. L. R. 44 Calc. 737**

FIXED RATE HOLDING.

See AGRA TENANCY ACT (II OF 1901), S. 79 . . **I. L. R. 39 All. 455**

See MORTGAGE . **I. L. R. 39 All. 539**

FIXTURES.

———— **removal of—**

See COMPENSATION.
I. L. R. 44 Calc. 87

FORCIBLE EJECTMENT.

See RAILWAY PASSENGER.
I. L. R. 44 Calc. 279

FOREIGN JUDGMENT.

———— **suit on—**

See CIVIL PROCEDURE CODE, 1908, S. 13 (*b*) . . **I. L. R. 40 Mad. 112**

FORGERY.

———— **antecedent—**

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 1002

FRAUD.

See HINDU LAW—WIDOW.
I. L. R. 41 Bom. 93

See RAILWAY PASSENGER.
I. L. R. 44 Calc. 279

FRAUDULENT REPRESENTATION.

See PARTITION SUIT.
I. L. R. 44 Calc. 28

FRAUDULENT TRANSFER.

See ATTACHMENT.
I. L. R. 44 Calc. 662

FULL BENCH.

———— **question referable to a—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 134 . **I. L. R. 40 Mad. 1040**

G

GAMBLING.

———— **in the courtyard of a mosque—**

See BOMBAY PREVENTION OF GAMBLING ACT (BOM. IV OF 1887), S. 12.
I. L. R. 41 Bom. 14

GENERAL CLAUSES ACT (I OF 1868).

——— s. 2 (*1*)—

See PLEADER . **I. L. R. 44 Calc. 290**

GENERAL CLAUSES ACT (X OF 1897).

——— s. 3, cl. (*52*)—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S 59 . **I. L. R. 41 Bom. 384**

——— s. 6 (c) and (e)—

See CIVIL PROCEDURE CODE (ACT V OF 1908), C. XXI, R. 93.
I. L. R. 40 Mad. 1009

——— ss. 6, 7—

See HABEAS CORPUS.
I. L. R. 44 Calc. 459

——— s. 13—

See PLEADER . **I. L. R. 44 Calc. 290**

GIFT.

See HINDU LAW—WIDOW.
I. L. R. 39 All. 520

See MAHOMEDAN LAW—GIFT.
I. L. R. 41 Bom. 372

——— by karta—

See HINDU LAW—JOINT FAMILY PROPERTY . . . . **L. R. 44 A. 201**

——— substantially to charity—

See MAHOMEDAN LAW—WAKF.
L. R. 44 I. A. 21

——— to unborn person, validity of—

See HINDU LAW—GIFT.
I. L. R. 40 Mad. 818

——— *Validity of gift—Death of donor before registration of deed—Registration by donee without consent of donor's legal representatives—Transfer of Property Act (IV of 1882), s. 123—Registration Act (III of 1877), effect of.* A deed of gift registered by the donee after the death of the donor without the consent of the legal representatives of the donor is valid. There is nothing in s. 123 of the Transfer of Property Act which requires the donor to have the deed registered; all that is required is that he should have executed the deed. Once such an instrument is duly executed, the Registration Act allows it to be registered even though the donor may not agree to its registration, and upon registration the gift takes effect from the date of execution. *Ramamirtha Ayyan* v. *Gopala Ayyan, I. L. R. 19 Mad. 433, Dasi Svarnam* v. *Deivanayagam Pillai, 28 Mad. L. J. 378* and *Amirdam* v. *Muthukumara Chetty, 13 Mad. L. J. 303*, overruled. VENKATI RAMA REDDI *v.* PILLATI RAMA REDDI (1916) . . . . **I. L. R. 40 Mad. 204**

GOVERNMENT.

——— assignment of jodi by—

See INAMDAR . **I. L. R. 40 Mad. 93**

——— jodi payable to—

See INAMDAR . **I. L. R. 40 Mad. 93**

——— right of, to a first charge in respect of jodi—

See INAMDAR . **I. L. R. 40 Mad. 93**

GOVERNMENT OF INDIA ACT, 1915.

——— s. 107—

See CRIMINAL PROCEDURE CODE, S. 145.
I. L. R. 39 All. 612

GOVERNOR-GENERAL IN COUNCIL.

——— powers of—

See HABEAS CORPUS.
I. L. R. 44 Calc. 459

GRANT.

See SARANJAM . **I. L. R. 41 Bom. 408**

——— *Grant by zamindar of Talabi Brahmottar tenure antecedent to Permanent Settlement—Tenures, permanent, hereditary, and transferable—Grantee, rights of, to minerals—Absence of express evidence that they formed part of the grant—Protraction of Indian litigation.* A "grant" in India has not the special and technical meaning attached to the same word in English law. A Talabi Brahmottar grant of a zamindar's village at a fixed rent made before the Permanent Settlement by the then Raja of Pachete to the predecessors in title of the appellant, although found to be a permanent, hereditary and transferable tenure, was *held* (affirming the decision of the High Court) not to carry with it the mineral rights in the soil. Minerals will not be held to have formed part of the grant, in the absence of express evidence to that effect. *Hari Narayan Singh Deo* v. *Sriram Chakravarti, I. L. R. 37 Calc. 723; L. R. 37 I. A. 136*, and *Durga Prasad Singh* v. *Braja Nath Bose, I. L. R. 39 Calc. 696; L. R. 39 I. A. 133*, followed. Protraction of Indian litigation deprecated. SHASHI BHUSAN MISRA *v.* JYOTI PRASAD SINGH DEO (1916) . . . **I. L. R. 44 Calc. 585**

GRANTOR AND GRANTEE.

See TITLE . **I. L. R. 44 Calc. 771**

GROVE.

See AGRA TENANCY ACT (II OF 1901) SS. 4, 167 . **I. L. R. 39 All. 605**

GUARANTEE.

——— contract of—

See PRINCIPAL AND SURETY.
I. L. R. 44 Calc. 978

GUARDIAN.

See GUARDIANS AND WARDS ACT (VIII OF 1890), SS. 39 AND 7.
I. L. R. 40 Mad. 672

See LUNACY ACT (IV OF 1912), S. 72.
I. L. R. 39 All. 158

——— natural, right of, to manage, pending appointment—

See GUARDIANS AND WARDS ACT (VIII OF 1890), S. 34.
I. L. R. 40 Mad. 775

——— *Testamentary Guardian—Appointment by implication.* Where a testator by his will appointed one *D* whom he called his "trusted friend" the executor and provided that *D* was on his death to take care of and supervise all his properties and manage his family and educate and maintain his sons *S* and *N*: *Held*, that these words amounted to appointing *D* guardian of both the persons and the properties of *S* and *N*. DHANANJAY BHUNJO *v* NEMA CHAND DAS (1917) . . **21 C. W. N. 1134**

GUARDIAN AD LITEM.

See CIVIL PROCEDURE CODE, 1908, s 151.
O. IX, R. 13 . **I. L. R. 39 All. 8**

GUARDIANS AND WARDS ACT (VIII OF 1890).

See MAHOMEDAN LAW—WAKF.
I. L. R. 39 All. 288

——— *Guardian if can be removed without opportunity to show cause—Ss. 34 (c) and 45 (1), cl. (b)—Punishment of guardian for non-payment of balance due from him—Considerations which should prevail with Courts in appointing and removing guardians.* The Guardians and Wards Act does not prescribe the procedure to be followed when the Court finds it necessary either of its own motion or at the instance of a party interested in the welfare of the infant to take steps for the removal of a guardian appointed by itself. But on the elementary rule that no order adverse to a party litigant should be made by a Court of Justice till he has been apprised of the charges brought against him and has been allowed reasonable opportunity to show cause, no order for removal of a guardian should be made till the guardian has been apprised of the charges brought against him and allowed reasonable opportunity to explain and, if possible, to defend his conduct. S. 45, sub.-s. (*1*), cl. (*b*), authorises the Court to impose a fine on guardian, if the guardian fails to pay into Court the balance due from him on the accounts exhibited by him in compliance with a requisition under s. 34 (*c*). The payment contemplated has to be made in compliance with a requisition under s. 34 (*d*), and no fine can validly be imposed on a guardian for failure to comply with a requisition calling upon him to bring into Court a larger sum than found due from him on the accounts exhibited under s. 34 (*c*). That the sole point for considerations in cases where the management of the infant's property by the guardian in question is at issue is the welfare of the infant and the investigation should be from that point of view alone and it is eminently desirable that no person should be appointed guardian of the person or property of an infant without some enquiries about his fitness for the office. JAGANNATH PANJA *v.* MOHESH CHANDRA PAL (1916).
21 C. W. N. 688

——— **s. 34**—*Order of appointment of guardian, conditional on giving security, when effective—Natural guardian's right to manage, pending appointment.* Where a guardian is appointed by a Court unconditionally, the order takes effect at once although under s. 34 of the Guardians and Wards Act (VIII of 1890), he may be required to furnish security subsequently. But where the order is conditional upon the furnishing of security, it does not take effect until the security has been furnished. Such a conditional order does not therefore deprive the natural guardian of his or her power of management of the minor's estate till the condition is satisfied. Hence an endorsement of a negotiable instrument belonging to the minor by the natural guardian before the condition is satisfied is not invalid. *Defries* v. *Creed, 34 L. J. (Ch.) 607*, followed. *Semble:* Rr. 240 to 242 and Forms Nos. 92 and 93 of the Civil Rules of Practice which make the appointment of a guardian take effect only on furnishing security, are not *ultra vires*. The dictum of SADASIVA AYYAR, *J.*, to the contrary in *Gopamal* v. *Srinivasa Ayyangar, 30 Mad. L. J. 508*, not followed. SUBBA NAICK *v.* RAMA AYYAR (1916).
I. L. R. 40 Mad. 775

GUARDIANS AND WARDS ACT (VIII OF 1890)—*concld.*

——— **s. 34**—*concld.*

——— **s. 39 and 7**—*Appointment by a Hindu father of a guardian for the person and property of his undivided minor son—Validity of appointment of guardian of property—Will written under instructions of testator partly on blank sheets previously signed, validity of.* A Hindu father is entitled to appoint by will, a guardian of the person of his minor son, but not of the properties in which his minor son will have a right by birth. A will appointing a guardian of such properties being invalid, it need not be set aside and cannot be set aside in an application made on behalf of the minor son under s. 39 of the Guardians and Wards Act for removal of the guardian. *Dr. Albrech* v. *Bathee Jellamma, 22 Mad. L. J. 247* and *Kanakasabai Mudaliar* v. *Ponnusami Mudaliar, 21 I. C. 848*, followed. The appointment of a guardian of the properties being invalid, the mother as natural guardian, becomes the guardian of the properties and if she be competent, there is no necessity for the Court to appoint her as such. Properties attached to *Tirumaligais* (houses of religious preceptors) are private and not trust properties. A will signed by the testator after completion on the sixth and the seventh sheets, is not invalid, because he signed some of the earlier sheets before the will was written, in them. *Namberumal Chetty* v. *Pasumarthy Kannia Chetty, 28 I. C. 959*, followed. ALAGAPPA AYYANGAR *v.* MANGATHAI AMMANJAR (1916).
I. L. R. 40 Mad. 672

H

HABEAS CORPUS.

——— **writ of—**

See JURY, TRIAL BY.
I. L. R. 44 Calc. 723

1. ——— *High Court, jurisdiction of—Power to issue writ—Procedure—Rights of the East India Company—Allegiance of the subject and sovereignty of the Crown—Prerogatives—Governor-General in Council, powers of legislation of—Emergency legislation—Act embodying provisions of Ordinances—Order for internment—Form of order—Warrant to arrest and imprison—Application for bail—Code of Criminal Procedure (Act V of 1898), s. 49—Emergency Legislation Continuance Act (I of 1915)—Ordinances III and V of 1914—Indian Councils Act (24 & 25 Vict., c. 67), ss. 22 and 23—East India Company's Act (26 Geo. III, c. 57) s. 29—Foreign Jurisdiction and Extradition Acts (XI of 1872), (XXI of 1879) and (V of 1903)—Interpretation Act (52 & 53 Vict., c. 63) s. 11—General Clauses Acts (I of 1868), s. 3 and (X of 1897), ss. 6 and 7.* Under s. 23 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67) no Ordinance can have any force of law for more than 6 months from its promulgation, but the Governor-General in Council has the power to pass an Act embodying the provisions of an Ordinance. The Governor-General in Council has also the power

HABEAS CORPUS—*concld.*

to oust the jurisdiction of the Courts, and s. 11 of Ordinance III of 1914, which is embodied in Act I of 1915 and which seeks to oust the jurisdiction of the Courts, does not offend against s 22 of the Indian Councils Act, 1861. Act I of 1915 is not an Ordinance extended, but an Act. It does not offend against the allegiance of the subject, or the sovereignty of the Crown It is not *ultra vires*, and this Court has no jurisdiction to call in question the orders which have been passed the reunder. It is for the Governor-General in Council to be satisfied on the materials before him. The Court cannot call for the materials to examine them. *In the matter of Rudolf Stallmann, I L. R. 39 Calc. 164, Lvinger* v. *Reg, L. R. 3 P. C 282. In the matter of Tuckut Roy, 1 Boulnois 354. In the matter of Ameer Khan, 6 B. L. R. 392. The same Case on appeal, 6 B. L. R. 459. Alter Caufman* v. *The Government of Bombay, I. L. R. 18 Bom. 636. The Queen* v. *Burah, L. R. 3 A. C. 889 ; L. R. 5 I. A. 178,* and *Reg.* v. *Halliday, [1916] 1 K B. 738, 20 C. W. N. (Notes) xci,* referred to. Where an Act repeals a previous Act, or a certain provision thereof, and the repealing enactment is itself subsequently repealed by another Act —*Held,* that the last repeal did not since 1850 revive the Act or provision before repealed, unless words there are reviving them. There was nothing in any of the Acts subsequent to the repealing Act (XI of 1872) which revived s. 29 of the East India Company's Act (26 Geo. III, c. 57). Where a person is detained in custody and an application is made to the Court under s. 491 of the Criminal Procedure Code :—*Held,* that the usual procedure was to issue a Rule in the first instance, and not to order the production of the petitioner. *In re* JEWA NATHOO AND OTHERS (1916) . **I. L. R. 44 Calc. 459**

2. ———— *Jurisdiction—Arrest—Criminal Procedure Code (Act V of 1898), ss. 54, 190, 491, 498—Procedure—Applications under s. 491. to whom should be made—Arrest under s. 54—"Reasonable suspicion" or "credible information" what to be based upon—Duties of police officer arresting—Practice.* Applications under s. 491 of the Code of Criminal Procedure ought to be made to the Judge sitting on the Original Side, and exercising the Oridinary Original Criminal Jurisdiction of the High Court. *In the matter of Rudolf Stallmann, I. L. R. 39 Calc. 164,* referred to. S. 54 of the Code of Criminal Procedure gives very wide powers and ought to be rigorously construed. "Reasonable suspicion" or "credible information" upon which an arrest can be made by a police officer under s. 54, must be based upon definite facts and materials placed before him, which the officer must consider for himself, before he can take any action under that section. He cannot delegate his discretion, or take shelter under another person's belief or judgment, but must act on his own personal responsibility. *Queen* v. *Behary Singh, 7 W. R. Cr. 3,* followed. CHARU CHANDRA MAZUMDAR, *In re* (1916) . . . **I. L. R. 44 Calc. 76**

HARVEST.

———— **experimental, right of—**

See ESTATES LAND ACT (MAD, ACT I OF 1908), SS. 4, 27, 73, 143.

I. L. R. 40 Mad. 640

HEADINGS OF STATUTES.

See NON-OCCUPANCY RAIYAT.

I. L. R. 44 Calc. 267

HEIRS.

———— **sale by one of several heirs—**

See MAHOMEDAN LAW—ALIENATION.

I. L. R. 40 Mad. 243

HEREDITARY OFFICES ACT (BOM. III OF 1874).

———— **ss. 4 and 53 and (Bom. Act V of 1886), s. 2**—*Vatan—Family—Meaning of the term 'family,' as used in the Act.* One Gopinath the original acquirer of a Vatan died without leaving any lineal descendent. At the time of his death his nearest relations were his first cousins Girdharlal Bhulabhai (senior uncle's son) and Mahasukhram Maharaiji (younger uncle's son). In 1868 two commutation Sanads were issued by Government in respect of the Vatan and the grantees were Dinanath Girdharlal and Dinanath's great nephew Venilal Maneklal The actual possession and enjoyment of the Vatan property thus continued with the family of Girdharlal down to the time of its last male holder Pransukhram and afterwards with his widow until her death. On widow's death the defendants (daughter and daughter's sons of Pransukhram) retained possession. The plaintiffs, therefore, representing the branch of Mahasukhram claimed to be entitled to possession of the Vatan property on the strength of s. 2 of Bom. Act V of 1886. Both the lower Courts held that the plaintiffs were members of the family qualified to inherit and as such excluded the female defendants. In second appeal it was contended that the respondents (plaintiffs) were not descended from the original Vatandar and therefore they were not members of his family and were not entitled to oust the females in possession. *Held,* that the term 'family' as used in the Vatan Act, 1874, meant those descended from a common progenitor who must be a Vatandar, and that the respondents were not entitled to oust the appellants from possession. BAI LAXMI *v.* MAGANLAL (1917).

I. L. R. 41 Bom. 677

HEREDITARY OFFICES ACT (BOM. III OF 1874 AS AMENDED BY BOM. ACT III OF 1910).

———— **ss. 25, 36, 63 and 64**—*Mharki Vatan —Suit to be declared a Vatandar—Civil Court—Jurisdiction.* The plaintiffs by a suit filed in the Civil Courts sought a declaration that they were the Vatandars of a *Mharki* Vatan. It was contended that although the civil Courts had jurisdiction to make a declaration as to Vatandars claiming *Patilki* or *Kulkarniki* Vatans the Courts had no jurisdiction to make any declaration as regards *Mharki Vatans. Held,* that it was competent to the Civil Courts to grant a declaration that the plaintiffs were Vatandars of a *Mharki* Vatan. *Ramchandra Dabholkar* v. *Anant Sat Shenvi, I. L. R. 8 Bom. 25,* followed. RAOJI FAKIRA *v.* DAGDU (1916) **I. L. R. 41 Bom. 23**

HIGH COURT.

———— **power to interfere with the discretion of District Judge—**

See DIVORCE ACT (IV OF 1869), S 14.

I. L. R. 41 Bom. 36

HIGH COURT—*concld.*

———— **revisional jurisdiction**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 439.
I. L. R. 41 Bom. 560

HIGH COURT, JURISDICTION OF.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195, SUB-S. (*6*).
I. L. R. 41 Bom. 631

See HABEAS CORPUS.
I. L. R. 44 Calc. 459

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 816

HIGH COURT RULES.

See PLEADER . **I. L. R. 44 Calc. 290**

HIGH COURT RULES (APPELLATE SIDE).

———— **Ch. II, r. v.**—

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 816

HIGH COURT RULES (ORIGINAL SIDE).

———— **rr. 397, 399**—

See COMMISSIONER.
I. L. R. 41 Bom. 719

HIGH SEAS.

———— **offence committed on**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) S. 188.
I. L. R. 41 Bom. 667

HINDU JOINT FAMILY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. I, R. 3.
I. L. R. 40 Mad. 365

HINDU LAW.

	COL.
ADOPTION	136
ALIENATION	138
CUSTOM	141
ENDOWMENT	141
GIFT	144
INHERITANCE	145
JOINT FAMILY	145
JOINT FAMILY PROPERTY . .	147
MAINTENANCE	147
PARTITION	147
REVERSIONERS	148
STRIDHAN	149
SUCCESSION	150
WIDOW	150
WILL	151

See BANKRUPTCY.
I. L. R. 40 Mad. 581

See CUTCHI MEMONS.
I. L. R. 41 Bom. 181

See EVIDENCE ACT (I OF 1872), S. 91.
I. L. R. 41 Bom. 466

HINDU LAW—ADOPTION.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 118.
I. L. R. 41 Bom. 728

1. ———— *Suit to have alleged adoption declared valid—Evidence of adoption—Absence of any deed or written record of adoption—No entries of expenditure on ceremonies in account books—Adopted child's name not changed and child left with its natural parents.* In this appeal which arose out of a suit by the natural father of the appellant to have his adoption declared valid, their Lordships of the Judicial Committee (affirming the decision of the Court of the Judicial Commissioner of the Central Provinces) *held*, on the evidence, that the alleged adoption was never made. It appeared that though the suit might well have been brought in the life time of the alleged adoptive father, who consistently denied that the adoption ever took place, it was not commenced until some months after his death. There was no deed of adoption or any other formal record of the event. *Sootrugun Sutputty* v. *Sabitra Dye, 2 Knapp P. C. 287*, referred to. There was no reference to any expenditure on the ceremony in the account books of either the natural or the adoptive father. *Lal Kunwar* v. *Chiranji Lal I. L. R. 32 All. 104; L. R. 37 I. A. 1*, referred to. No feast was proved to have taken place on the occasion of the alleged adoption; the ceremonies said to have been performed were of the briefest possible description; no notification was made to the authorities; the child's name was not changed, and he was never taken to live with his adoptive parents, or recognised by them in any way; and all the surrounding circumstances and conditions not only did not support the adoption, but made it highly improbable that the ceremony of adoption was ever performed in regard to the appellant. DIWAKAR RAO *v.* CHANDANLAL RAO (1916) . **I. L. R. 44 Calc. 201**

2. ———— *Adoption—Dvyamushyayana adoption—Presumption.* In every case of *a nitya dvyamushyayana* form of adoption, there must be an agreement to that effect: such an agreement must be proved by the person setting up the *dvyamushyayana* adoption, like any other question of fact, as much in the case of the adoption of an only son of a brother as in any other case of such an adoption. *See* LAXMIPATIRAO *v.* VENKATESH (1916) . **I. L. R. 41 Bom. 315**

3. ———— *Adoption by a minor widow—Want of independent, disinterested advice—Validity of adoption—Ratification by widow after attaining majority, effect of.* A widow, authorized by her husband to adopt a boy *if* and *when* she chose, adopted her own brother, when she was eleven years of age on the interested advice of her father. *Held*, that the adoption made by the widow while a minor and without independent advice, was void *ab initio* and could not be therefore validated by subsequent ratification. *Sri Rajah Venkata Narasimha Appa Row* v. *Sri Rajah Rangayya Appa Row, I. L. R. 29 Mad. 437*, dissented from. SATTIRAJU *v.* VENKATA SWAMI (1917) **I. L. R. 40 Mad. 925**

4. ———— *Adoption by one adjudged a lunatic under the Lunatic Act (XXXV of 1858) valid only, if of sound mind at the time—Presumption of continuity of unsound mind—Onus of proving the contrary.* The effect of an

HINDU LAW—ADOPTION—*contd.*

adjudication under the Lunacy Act (XXXV of 1858) that a person is a lunatic, is to raise a presumption that he continued to be of unsound mind until the contrary is shown. *Van Gruteen* v. *Foxwell*, [*1897*] *A. C., 658*, and *Snook* v. *Watts, 11 Beavan, 105*, followed. Though the effect of an order under the Act appointing a manager for the properties of a lunatic is not to incapacitate him from making an adoption till the order is set aside; still, unless it is proved that the lunatic was of sound mind at the time he is alleged to have made the adoption, the adoption is invalid. *Semble:* Adoption is not an act which amounts to an alienation of property. It affects status and it has, in the opinion of Hindus, religious efficacy and it would not be right for a Court to hold that a Hindu is deprived by any statute, of the power of making an adoption unless there are clear unambiguous words to that effect. SESHAMMA *v.* PADMANABHA RAO (1916) . . . . **I. L. R. 40 Mad. 660**

5. ——— *Adoption of an orphan by a widow in 1862—Possession of estate by adopted son—Death of adopted son in 1864—Adoption by his widow—Possession of latter adopted son till 1876 Dispossession by former widow in 1876—Death of adopted son in 1881—Suit by latter's widow against former widow for possession—Decree—Death of former widow in 1902—Suit by reversioners of the original owner in 1905—Suit for possession against widow and alienees from both widows, if, barred—Title of reversioners, if, extinguished—Limitation Act IX of 1871, Art. 129 and s. 29—Later Limitation Acts (XV of 1877 and IX of 1908) effect of—Res judicata—Sudra ascetic or Tambiran—Entry into, order of—Right of inheritance, if forfeited—Texts as to Yat, applicability of, to Sudras—Usage—Civil Procedure Code (Act V of 1908), O. XLI, r. 4—Decree on appeal.* *A*, a Hindu, died in 1849 without issue, leaving a widow *C*. She adopted *B*, an orphan, as a son to her husband in 1862 and put him in possession of her husband's properties, other than those alienated by her prior to adoption. *B* died issueless in 1864 leaving a widow *M*, who adopted *T*. The latter was in possession of the properties till 1876 when he was dispossessed by *C*. *T* died issueless in 1881, leaving a widow who also died in 1882. *M*, who succeeded to the estate as *T*'s heiress, sued *C* in 1887 and recovered possession of the estate from her. *C* died in 1902. In 1905, the plaintiffs, claiming to be the reversioners of *A* on *C*'s death, sued to recover the estate of *A* from the defendants. Some of the defendants were alienees from *M* who was the fourth defendant; some others were alienees from *C*, while the first defendant claimed a fourth share in the estate as the widow of one *K* who was a co-reversioner along with the plaintiffs but had become a *Tambiran* before *C* died in 1902. The defendants other than the first, contended *inter alia* that the suit was barred by limitation and by the rule of *res judicata*: *Held*, (i) that a suit by the reversioners of *A* for recovery of possession of such of *A*'s properties as were in the possession of the heirs of the adopted son had become barred in 1874 under art. 129 of the Limitation Act (IX of 1871) and that a title to such property was acquired by the heirs of the adopted son under s. 29 of the same Act and could not be affected by the provisions of the later Limitation Act XV of 1877 or Act IX of

HINDU LAW—ADOPTION—*concld.*

1908; (ii) that, although the plaintiffs who were the actual reversioners of *A* in 1902, were not in existence when the twelve years limited by art. 129 expired, their title as reversioners was barred; (iii) that, consequently, the present suit as against the fourth defendant (the widow of the adopted son) and her alienees was barred by limitation; (iv) but that in respect of the properties alienated by the widow of *A*, the present suit for recovery of possession from her alienees was not barred by limitation. *Jagadamba Choudhrani* v. *Dakhina Mohun Roy Chaodhri, I. L. R. 13 Calc. 308*, and *Mohesh Narain Munshi* v. *Taruck Nath Moitra, I. L. R. 20 Calc. 487*, followed. *Tirubhuwan Bahadur Singh* v. *Rameshar Baksh Singh, I. L. R. 28 All. 727*, explained and applied: *Held*, also, that the present suit was not barred by the rule of *res judicata* by the decision in the previous suit instituted by *M*, against *C*. *Hari Nath Chatterjee* v. *Mothur Mohun Goswami, I. L. R. 21 Calc. 8*, distinguished. The texts of Hindu Law as to disinheritance applicable to *Yati* or *Sanyasi* do not apply to Sudra ascetics unless a usage to this effect is established: *Dharmapuram Pandara Sannadhi* v. *Vira Pandiyan Pillai, I. L. R. 22 Mad. 302* and *Harish Chandra Roy* v. *Atir Mahmud, I. L. R. 40 Calc. 545*, referred to: *Held* (on the evidence), that no usage was established in this case; consequently that the first defendant's husband was not excluded from inheriting as a co-reversioner with the plaintiffs by reason of his having entered the order of *Tambirans* before the succession opened in 1902 and that the first defendant was entitled to recover one-fourth share in the estate in right of her husband: *Held*, further, that where an appeal was preferred by some only of the alienees who were defendants but no appeal was preferred by the other alienees or the alienor who were also defendants, a decree can be passed in the appeal dismissing the suit in favour of the latter defendants also. *Kulaikada Pillai* v. *Viswanatha Pillai, I. L. R. 28 Mad. 229*, and *Subbarayalu Naidu* v. *Pappammal*, Second Appeal No. 557 of 1914, followed. Where some of the appellants, who were defendants, died and their legal representatiyes were not brought on the record in the appeal: *Held*, that it was competent to the Court under O. XLI, r. 4, to set aside the decree as regards the whole of the plaintiff's claim and not merely in respect of the interest of those appellants only whose appeals had not abated. *Chintaman* v. *Gangabai, I. L. R. 27 Bom. 284*, followed. *Dhuttaloor Subbayya* v. *Paidigantam Subbayya, I. L. R. 30 Mad. 470*, referred to. SOMASUNDARAM CHETTIAR *v.* VAITHILINGA MUDALIAR (1916) . . . **I. L. R. 40 Mad. 846**

HINDU LAW—ALIENATION.

1. ——— *Onus of proof of legal necessity—Recitals in deeds as to necessity—Evidence of representation to purchasers—Value of recital after lapse of time when actual proof of enquiry has become impossible—Attestation of deed, effect of, as evidence of knowledge of contents, or of consent by reversioner—Unexplained delay in prosecution of appeals—Costs disallowed if delay due to appellant.* In a suit for property alienated by a Hindu widow in possession of her husband's estate the burden of proving legal necessity for the alienations lies on the purchasers. *Maheshar Baksh Singh* v. *Ratan Singh, I. L. R. 23 Calc. 766*; *L. R. 23 I. A.*

HINDU LAW—ALIENATION—*contd.*

57, followed. Recitals in deeds cannot by themselves be relied upon for the purposes of proving the assertions of fact which they contain. They can only be evidence as between the parties to the conveyances and those who claim under them. After a long period, however, has elapsed between the alienation and the suit to set it aside when all those who could have given evidence on the relevant points have grown old or have passed away, a recital consistent with the probabilities and circumstances of the case assumes greater importance and cannot lightly be set aside. The recital is clear evidence of the representation, and if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth, then when proof of actual enquiry has become impossible the recital coupled with such circumstances would be sufficient evidence to support the deed. Where the total value of the estate was small and there were expenses like the husband's *shradh* and any debts against his estate, which had to be paid, besides the necessity for the maintenance of the widows which need not be measured merely by a sufficient sum to support existence, the periods at which, between 1848 and 1865, the properties were sold the small sums for which the sales were made, and the disposition of the property piece by peace with fair regularity for 16 years all went to support the view that the widows found themselves unable to provide sufficient maintenance out of the income of the estate, until their means came to an end in 1865, and the circumstances were such as would be sufficient to justify the assumption that proper enquiry would have disclosed that necessity existed. There was only the one fund for payment and if money was needed to pay debts, the amount of money available for maintenance would to that extent be reduced, and if the debts had been paid by the widows out of borrowed money it would make no difference whether the necessity to pay debts, or to maintain themselves was stated in the recitals as reason for the sale. Attestation of a deed proves no more than that the signature of an executing party has been attached to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed, nor affect him with notice of its provisions. If it had been quite impossible for either of the widows lawfully to dispose of any interest in the properties, and it was shown that the witness knew the nature of the deed, more value might be given to his attestation, but by itself it would neither create an estoppel nor imply consent. *Hari Kisken Bhagat* v. *Kashi Prasad Singh, I. L. R. 42 Calc. 876; L. R. 42 I. A. 64,* referred to. Comments were made by their Lordships on the delay that had occurred between the decrees of the High Court in August 1909 and the setting down of the appeals for hearing in April 1916, for which no sufficient reason appeared. Unexplained, it constituted a grave reproach to the administration of justice. All the respondents had been unjustly attacked in the lawful possession of property, and for seven years had been subject to the anxiety and distress of knowing that the judgment of the High Court in their favour was subject to the inevitable uncertainties of the law. Their Lordships said that had the appeals succeeded they would have refused the appellants any costs

HINDU LAW—ALIENATION—*contd.*

of the appeals unless they could have cleared themselves of the imputation of having needlessly protracted the proceedings; and that course would be taken in similar cases in the future, if occasion arose. BANGA CHANDRA DHUR BISWAS *v.* JAGAT KISHORE ACHARJYA CHOWDHURI (1916).

I. L. R. 44 Calc. 186

2. ——— *Mitakshara school —Joint family property—Alienation by father not for necessity and not for antecedent debt, son if bound by.* Joint property of a Mitakshara Hindu family cannot be alienated as against co-shares by way of mortgage or otherwise, except for necessity, or for the payment of an antecedent debt quite distinct from the debt incurred in the mortgage itself, and the sons of the mortgagors are not bound by any such alienation by reason of any pious obligation to pay their father's debt. JOGI DAS *v.* GANGA RAM (1917).

21 C. W. N. 957

3. ——— *Joint Hindu family —Alienation of joint property of family governed by Mitakshara law—Mortgage not for family necessity or to pay antecedent debt—Suit on mortgage—Non-liability of sons and grandsons of mortgagors.* Where a mortgage had been made by some of the members of a Hindu joint family governed by the Mitakshara law who joined in borrowing Rs. 1,200 on the security of the property of the joint family of which they were the heads without the consent of their co-partners, and it was found that the mortgage was *primâ facie* invalid as against the family property as being neither for an antecedent debt, nor for any proved necessity of the joint family: *Held,* that the mortgage could not be upheld on the doctrine laid down in the case of *Mahabeer Prasad* v. *Ramyad Singh, 1 B. L. R. 190; 20 W. R. 192,* which was distinguishable on the ground that there were special circumstances in that case which did not exist in the present case, and it therefore did not lay down the general law. The general law was laid down in *Madho Parshad* v. *Mehrban Singh, I. L. R. 18 Calc. 157, 163: L. R. 17 I. A. 194, 196,* which governed this and all other cases of the kind, and according to those principles the mortgage in suit was invalid as against the sons and grandsons of the mortgagors. LACHMAN PRASAD *v.* SARNAM SINGH (1917) . **I. L. R. 39 All. 500**

4. ——— *Joint Hindu family —Sale of ancestral property by father without legal necessity—Sale set aside at instance of sons—Vendee not entitled to refund of consideration by sons.* A sale of the property of a joint Hindu family made by the father for an antecedent debt or for the payment of an antecedent debt is binding on the sons; but if the consideration for such sale is not for any of the purposes mentioned above, the sons are entitled to recover the property. But in such case the sons are not liable to refund the purchase money to the vendee. *Ram Doyal* v. *Suraj Mal, 23 Indian Cases 891, Manbahal Rai* v. *Gopal Misra, All. Weekly Notes, 1901, p. 57,* and *Chandra Deo Singh* v. *Mata Prasad, I. L. R. 31 All. 176,* referred to. *Koer Hashmat Rai* v. *Sundar Das, I. L. R. 11 Calc. 396,* dissented from. MADAN GOPAL *v.* SATI PRASAD (1917) . . . **I. L. R. 39 All. 485**

5. ——— *Sale by father of joint family property, without legal necessity—Suit by*

HINDU LAW—ALIENATION—*concld.*

sons to repudiate the sale—Mesne profits payable by purchase from date of such repudiation. Where the father as manager alienates joint Hindu family property without legal necessity and the sons repudiate the sale, a purchaser who had no notice that the father was incompetent to sell the property is in equity only liable to pay mesne profits from the date of such repudiation. *Mugun Chunder Chuttoraj* v. *Surbessur Chuckerbutty, 3 W. R. 479, Dakhina Mohan Roy* v. *Saroda Mohan Roy, I. L. R. 21 Calc. 142,* and *Grish Chander Lahiri* v. *Soshi Shikhareswar Roy, I. L. R. 27 Calc. 95 ; L. R. 27 I. A. 100,* referred to. BHIRGU NATH CHAUBE *v.* NARSINGH TIWARI, (1916).
I. L. R. 39 All. 61

HINDU LAW—CUSTOM.

——————— *Right to perform festival in a temple—Ubayakar—Right of married daughter of last ubayakar—Special custom—Onus of proof.* The right to perform a festival in a temple is a secular privilege and does not confer on the holder an office. The daughter of the last *ubayakar* or holder of the right, being his heir, is, in the absence of proof of a special custom excluding females, entitled to exercise such right, although she has been married into another family. *Tangirala Chiranjivi* v. *Raja Manikya Rao, 27 Mad. L. J. 179, Raja Rajeswari Ammal* v. *Subramania Archakar, 30 Mad. L. J. 222,* and *Vengamuthu* v. *Pandaveswara, I. L. R. 6 Mad. 151,* referred to. PANKAJAMMAL *v.* THE SECRETARY OF STATE FOR INDIA (1916) . . . . **I. L. R. 40 Mad. 1108**

HINDU LAW—ENDOWMENT.

1. ——————— *Construction of deed of endowment—Deed contended to be invalid as being not a real dedication to idol—Appointment of members of donor's family as mutawallis—Deed held valid as creating an endowment.* The question in this appeal was as to the construction of a deed of endowment executed and registered by a Hindu on the 20th of July, 1898. In a suit after his death to set aside the deed, the appellants, as next reversioners, claimed that no valid endowment had been created, or was intended to be created by it. Their Lordships in dismissing the appeal distinguished the cases of *Sonatun Bysack* v. *Juggutsoondree Dossee, 8 Moo. I. A. 66,* and *Ashutosh Dutt* v. *Doorga Churn Chatterji, I. L. R. 5 Calc. 438 ;* L. R. 6 I. A. 182, cited in support of the appellants' contention, on the ground that, although nominally there was a gift to the idol, that gift was so cut down by subsequent disposition that there was no gift to the idol such as to make the property pass as an absolute and entire interest in his favour. *Held,* that there was no such cutting down in the present case. There was in the beginning a clear expression of an intention to apply the whole estate for the benefit of the idol and the temple, and the rest of the disposition was only a gift to the idol by a direction that of the whole estate which had already been given, one half was to be applied for the upkeep of the idol itself, and the repair of the temple, and the other half was to go for the upkeep of the *mutawallis.* There was no reason why the donor should not nominate the members of his family as the *mutawallis* of the temple, and he had done so. And there was nothing in that which militated against the propriety of his earmarking a certain part of the money to remunerate them as managers so long as they should so continue. By the registration of the deed the executant showed that it represented an intention which he desired to treat as carried into execution. JADU NATH SINGH *v.* THAKUR SITA RAMJI (1917)
I. L. R. 39 All. 553

HINDU LAW—ENDOWMENT—*contd.*

2. ——————— *Endowment—Debt, contracted by head of adinam—Onus of proof of necessity Suit to recover money, borrowed on mortgage of endowed property—Recognition of debt binding the property by successive heads of institution—Account books not produced.* The appellant sued to recover money advanced on a mortgage bond dated 4th November 1897 to the head of an adinam or mutt, and to enforce the mortgage against the property of the mutt which was hypothecated as security for the loan. The deed was for Rs. 20,000, the balance of principal and interest due on a former bond of 24th June 1883, and it stated that "the bond is granted as was the former one over the lands belonging to the adinam." The bond of 1883 had been executed for the sum of Rs. 14,946 for the balance due on a promissory note, and recited that it was "for the expenses of the aforesaid adinam." And the promissory note for the original loan stated that "the sum received by us to-day in cash for the expenses of our adinam is Rs. 14,000." That was taken in December 1881 shortly after the termination of some litigation necessary in the interests of the adinam. The binding nature of the debt was recognized by successive managers of the mutt who paid from time to time interest on the money and other amounts towards the discharge of the debt over a period of 26 years. *Held,* that though the onus was on the lender to show that the loan was made for the purposes of the mutt and was a necessary expense of the institution itself, yet where the debt had been so recognized as binding, and dealt with on that basis, their Lordships were of opinion that there was a sufficient body of evidence that the loan was made for purposes binding on the mutt : and there was no evidence to the contrary. In favour of this view, it was an important fact that the account books of the mutt were not produced in which it is the habit of the head or manager to make entries with much detail and elaboration forming a current record on the financial side of the history of the institution. The parties to a suit should bring before the Court their best evidence ; and when it is not produced the Court is justified in concluding that it would, if brought into Court, not support the case of the party omitting to produce it. MURUGESAM PILLAI *v.* MANICKAVASAKA PANDARA SANNADHI (1917) . **I. L. R. 40 Mad. 402**

3. ——————— *Endowment—Power of shebait to grant permanent lease of endowed property—Necessity—"Benefit to estate"—Lease at fixed rent—Same principles apply to building site in village street as to agricultural lands—Question as to existence of ancient custom—Question of mixed law and fact—Concurrent findings—Privy Council, practice of—Error in form of finding of custom.* In this appeal it was held by their Lordships of the Judicial Committee that the grant, at a fixed rent, and on payment of a premium of a permanent lease by a *shebait* of a portion of the lands dedicated to the worship of the idol of which he is a trustee, was invalid as against his successor in the *shebaitship,* as in their Lord-

HINDU LAW—ENDOWMENT—*contd.*

ships' opinion, the evidence did not establish that the *shebait* was constrained by any necessity to make such a lease, or that any benefit accrued to the estate from it. *Devasikamony Pandara Sannadhi* v. *Palaniappa Chettiar, I. L. R. 34 Mad. 535*, affirmed. Where, as in this case, there is no deed of endowment forthcoming, the rules, according to which the endowed property and its income are to be dealt with in order to carry out the intention of the original endower, can only be ascertained by inference from the practice proved by evidence to have been followed in the particular case: *Ram Parkash Das* v. *Anand Das, I. L. R. 43 Calc. 707, 716; L. R. 43 I. A. 73, 78*, referred to. The rules must not be inconsistent with or repugnant to the very nature and purpose of the endowment. Both the worship of the idol and the preservation and use of the dedicated property to support and maintain that worship must be assumed to have been intended to be perpetual. A rule therefore which authorized the *shebait* arbitrarily at his own wish and pleasure to alienate any of the dedicated property would be so repugnant to the whole purpose and object of the endowment that it could not be held to embody the original endower's intention. A *debottar* estate may be mortgaged to secure the repayment of money borrowed and applied to prevent its own extinction by sequestration. *Hunooman Persaud Panday* v. *Babooee Munraj Koonweree, 6 Moo. I. A. 398, 423, 424, Prosunno Kumari Debya* v. *Golab Chand Baboo, L. R. 2 I. A. 145, 151, 152; 14 B. L. R. 450, 469*, and *Konwar Doorganath Roy* v. *Ram Chunder Sen, I. L. R. 2 Calc. 341, 352, 353; L. R. 4 I. A. 52, 62, 64*, referred to. In these cases there was to be found no indication as to what was in this connection, the precise nature of the things to be included under the description "benefit to the estate": and no definition of it applicable to all cases can be given. It is a breach of duty on the part of a *shebait, unless constrained by an* unavoidable necessity, to grant a lease in perpetuity of *debottar* lands at a fixed rent however adequate that rent may at the time of granting, by reason of the fact that by this means the *debottar* estate is deprived of the chance it would have, if the rent were variable, of deriving benefit from the enhancement in value, in the future, of the lands leased. *Maharanee Shibessouree Devia* v. *Mothooranath Acharjo, 13 Moo. I. A. 270, 275, Mayandi Chettiar* v. *Chokalingam Pillay, I. L. R. 27 Mad. 291, 299; L. R. 31 I. A. 83, 88*, and *Abhiram Gossami* v. *Shyama Charan Nandi, I. L. R. 36 Calc. 1003, 1013; L. R. 36 I. A. 148, 165*, referred to. These cases dealt with agricultural lands, but there was no reason why the principles they establish, should not apply to a building site in the street of a village as in the present case. No authority had been cited to show that a *shebait* is entitled to sell *debottar* lands solely for the purpose of investing the price of it so as to bring in an income larger than that derived from the *debottar land itself*. Questions of the existence of an ancient custom are questions of mixed law and fact. Although therefore the two Courts had purported to find that a local custom modifying the law had been proved, there were no such concurrent findings of fact as according to the practice of the Board it was bound to accept. Neither of the Courts below, moreover, had stated its conclusion in a form

HINDU LAW—ENDOWMENT—*concld.*

which amounted to a finding that any ancient custom such as modified the law existed in the locality. PALANIAPPA CHETTY *v.* DEVASIKAMONY PANDARA SANNADHI (1917).

I. L. R. 40 Mad. 709

4. ——— *Mutt, head of—Power of, to grant permanent lease—Limitation Act (IX of 1908), Art. 134—Permanent lease, a transfer within the article.* Although the head of a *mutt* is entitled to appropriate part of the income of the properties of the *mutt* to his own maintenance, he is only a trustee in respect of those properties, and he is ordinarily incompetent to grant a permanent lease of the *mutt* properties. A permanent lease for an annual rent is a transfer for a valuable consideration within Art. 134 of the Limitation Act (IX of 1908) and the transferee acquires an indefeasible title to the permanent lease by possession for 12 years as provided by the article. Knowledge that the title of the transferor is only a limited one cannot by itself disentitle the transferee to the benefits of Art. 134. *Ram Parkash Das* v. *Anand Das, I. L. R. 43 Calc. 707, Subbaiya Pandaram* v. *Mahammad Musthapa Maracayar, Appeal No. 13 of 1916*, and *Ram Kani Ghose* v. *Raja Sri Hari Narayan Singh Deo Bahadur, 2 C. L. J. 546*, followed. BALASWAMY AYYAR *v.* VENKATASWAMY NAICKEN (1916) . . . . **I. L. R. 40 Mad. 745**

HINDU LAW—GIFT.

——— *Gift to unborn person, validity of—Settlement deed in 1889—Gift to daughter for life, then to her unborn children, effect of—Alienation by daughter—Suit by adopted son of settlor—Right of reversioner to sue—Hindu Transfers and Bequests Act (Madras Act I of 1914)—Suit decided before the Act—Act passed pending appeal—Act, if applicable to the appeal—Power of Appellate Court in passing decrees on appeal—Civil Procedure Code (Act V of 1908), O. XLI, r. 33—Declaratory decree, nature of—Discretion of the Court in such cases.* A Hindu executed a deed of settlement in 1889 by which he demised some properties to his daughter, "in order that she may enjoy them during her lifetime and that after her they should be enjoyed *with all rights* by her sons and daughters who may be alive"; the daughter alienated some of the properties in 1907; the plaintiff, the adopted son of the settlor, claiming to be the nearest reversioner filed a suit in 1912 for a declaration that the alienations were without necessity and not binding on the reversioners. He impleaded the settlor's daughter as the first defendant, and her daughter, born in 1889, as the second defendant and the alienees as the other defendants. The Hindu Transfers and Bequests Act (Madras Act I of 1914) came into operation during the pendency of the appeal in the lower Appellate Court. Both the Lower Courts dismissed the suit. *Held*, on second appeal, (i) that the Hindu Transfers and Bequests Act (I of 1914) was retrospective in its operation and was applicable to this case; (ii) that the gift in favour of unborn children of the daughter of the settlor was valid; (iii) that consequently the plaintiff was not the nearest reversioner entitled to maintain the suit; (iv) that the rule that a remote reversioner can sue if the nearest reversioner is a female is inapplicable when the latter is entitled to an absolute estate; (v) that there

HINDU LAW—GIFT—*concld.*

was no collusion between the first and the second defendant by reason of the fact that the latter's guardian put forward an alternative contention on a point of law setting up an absolute title in favour of the first defendant; (vi) that the authority of an Appellate Court is not limited to determining the question whether the original Court was right according to the law in force at the date of its judgment, but was entitled to pass such decree or order as was in accordance with any later enactment which came into operation subsequent to such date. *Kanakayya* v. *Janardhana Padhi, I. L. R. 36 Mad. 439*, and *Govinda Parama Guruvu* v. *Dandusi Prudhanu, 20 Mad. L. J. 528*, referred to; and (vii) that a declaratory decree is a matter of discretion and when there was already one and there might be more than one preferential heir before the plaintiff, the discretionary relief could be properly refused. MUTHUSWAMI AYYAR *v.* KALYANI AMMAL (1916).

I. L. R. 40 Mad. 818

HINDU LAW—INHERITANCE.

——————— *Inheritance—"Samanodaka," meaning of—Reversioner, claim by—Onus of proof.* According to Mitakshara and the view prevalent in Southern India, *samanodaka* relationship is confined to such of the *gottrajas* as are within fourteen degrees from the common ancestor. It is incumbent on a plaintiff seeking to succeed to property as an heir, affirmatively to establish the particular relationship which he puts forward. He is also bound to satisfy the Court that, to the best of his knowledge, there are no nearer heirs. It is for those who claim that their kinship is nearer than that of the plaintiff, to prove that relationship. *Secretary of State for India* v. *Subraya Karantha, (1915) Mad. W. N. 962*, followed. A *gottraja* who is unable to trace his descent from a common ancestor, cannot be preferred to a *bandhu*. RAMA ROW *v.* KUTTIYA GOUNDAN (1916) . . **I. L. R. 40 Mad. 654**

HINDU LAW—JOINT FAMILY.

See HINDU LAW—JOINT FAMILY PROPERTY.

1. ——————— *Joint family—Will by father bequeathing some lands to his daughter with consent of major son and of relations interested in his minor son—Validity of disposition.* A father in a joint Hindu family can with the consent of his adult son and with the consent of his relations who are interested in a minor son of his, bequeath a portion of his property to his daughter provided the portion is reasonable in extent. *Brijraj Singh* v. *Sheodan Singh, I. L. R. 35 All. 337*, *Kudutamma* v. *Narasimhacharyulu, 17 Mad. L. J. 528*, *Anivillah Sundara Ramayya* v. *Cherla Seethamma, 21 Mad. L. J. 695*, and *Arunachela Pillai* v. *Sampurnathachi, 27 Mad. L. J. 485*, applied. PATRA CHARIAR *v.* SRINIVASA CHARIAR (1917)

I. L. R. 40 Mad. 1122

2. ——————— *Joint family Property—Alienation by father—Suit by sons to set aside alienation—One of the sons born after alienation—Whether his interest bound—Time-barred debt acknowledged by registered deed—Undue influence—Father's interest bound by the deed—Time, when the share is ascertained.* The plaintiffs *P* and *B* and defendant No. 2, their father, constituted a joint Hindu family. On September 19th, 1901,

HINDU LAW—JOINT FAMILY—*contd.*

defendant No. 2 sold certain family land to defendant No. 1. Plaintiff *B* was born subsequently to the date of the alienation and was a minor when the suit was filed. The plaintiffs sued to set aside the sale deed on the ground that it was taken from defendant No. 2 by undue influence and for no consideration. The Subordinate Judge dismissed the plaintiffs' suit holding that the consideration for the deed was an antecedent debt which though barred by time was acknowledged by defendant No. 2 by a registered deed which was binding on the plaintiffs. The lower appellate Court reversed the decree and directed that plaintiffs and defendant No. 2 be restored to possession. On appeal to the High Court by defendant No. 1, the question was raised whether the time-barred debt acknowledged by the registered deed was not good consideration for the alienation of the defendant No. 2's interest in the property. *Held*, that defendant No. 2's interest was bound by the deed. *Held*, also, that defendant No. 1 acquired the half share in the alienated property to which defendant No. 2 was entitled at the date of the alienation owing to the fact that the minor plaintiff was not then born. NARO GOPAL *v.* PARAGAUDA (1916).

I. L. R. 41 Bom. 347

3. ——————— *Mitakshara—Joint Hindu family—Mortgage of joint Hindu family property by father—Mortgage executed at time of loan—Liability of sons in suit to enforce mortgage—Antecedent debt—Burden of proof.* The exception relating to antecedent debts which covers the case of a mortgage or sale by the father of a joint family governed by the Mitakshara law, being an exception from a general and sound principle that if a debt contracted by the father is not for the benefit of the joint family estate he should have no power either of mortgage or sale of the estate to meet such debt, is one which should not be extended and should be very carefully guarded. A loan made to the father on the occasion of a grant by him of a mortgage on the family estate is not an antecedent debt: to hold otherwise would be to extend unduly and improperly the whole scope of the exception provided by the Mitakshara law. The decision of the majority of a Full Bench in the case of *Chandradeo Singh* v. *Mata Prasad, I. L. R. 31 All. 176*, approved. The statement of the law in *Nanomi Babuasin* v. *Modhun Mohun, I. L. R. 13 Calc. 21, 35; L. R. 13 I. A. 1, 14*, by Lord HOBHOUSE as to the establishment by the Courts in India of "the principle that the sons cannot set up their rights against their father's alienation of an antecedent debt, or against his creditors remedies for their debts if not tainted with immorality," does not give any countenance to the idea that the joint family estate can be effectively sold or charged in such manner as to bind the issue of the father except where the sale or charge has been made in order to discharge an obligation not only antecedently incurred, but incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available by the joint estate. The exception applied only to the case where the father's debts have been incurred irrespective of the credit obtainable from immovable assets which did not personally belong to him but were joint family property. If it were extended further, the exception would be

HINDU LAW—JOINT FAMILY—*concld.*

made so wide as in effect to extinguish the sound and wholesome principle that no manager, guardian, or trustee can be entitled for his own purposes to dispose of the estate which is under his charge. To permit him to do so would enable him to sacrifice those rights which he was bound to conserve. This would be equivalent to sanctioning a plain, and, it might be, a deliberate breach of trust. The Mitakshara law does not warrant or legalize any such transaction. The limits of the exception thus set forth form a guide to the settlement of the conflict of authority in India on the subject of antecedent debt. In their Lordships' opinion the mortgage in suit was not granted in respect of an antecedent debt, and was invalid. *Chandradeo Singh* v. *Mata Prasad, I. L. R. 31 All. 176, 189, 196, per* Sir John Stanley, C. J., referred to. SAHU RAM CHANDRA *v.* BHUP SINGH (1917).

I. L. R. 39 All. 437

HINDU LAW—JOINT FAMILY PROPERTY.

1. ——— *Mixed fund—Gift by Karta—Statement against interest—Evidence Act (I of 1872), s. 32, sub-s. (3)—Civil Procedure Code (XIV of 1882), s. 317.* Where the *Karta* of a Mitakshara joint family has habitually mixed his professional earnings in account with receipts from the joint property, and the circumstances are such that purchases by him in the name of himself or his brother, are to be regarded as joint family property, it is still competent to him to make a gift out of his earnings, though they have been brought into the account. A statement made by the *Karta*, since deceased, in a former suit that he bought properties as a provision for his son-in-law is admissible in evidence under s. 32, sub-s. (*3*) of the Evidence Act, 1872, as a statement made against his interest, and, coupled with other evidence of intention, defeats a claim that, properties bought in the name of his son-in-law were bought *benami* for the joint family. With regard to properties bought at sales in execution, and as to which the son-in-law was the certified purchaser, the claim by the joint family was *held* to be barred by s. 317 of the Code of Civil Procedure, 1882. SURAJ NARAIN *v.* RATAN LAL (1917) . . **L. R. 44 I. A. 201**

2. ——— *Mortgage by Karta—No rights against Karta.* A mortgage of the joint family property of a Mitakshara family by its *karta*, unless necessity or an antecedent debt is proved, is void; the transaction itself gives to the mortgagee no rights against the *karta's* interest in the joint family property. *Madho Parshad* v. *Mehrban Singh, L. R. 17 I. A. 194,* applied. *Mahabeer Persad* v. *Ramyad Singh, 12 B. L. R. 90,* discussed. NARAIN PRASAD *v.* SARNAM SINGH (1917) . . . . **L. R. 44 I. A. 163**

HINDU LAW—MAINTENANCE.

——— *Wife's right to maintenance forfeited by unchastity.* Under the Hindu law a wife is not entitled to maintenance from her husband, if at the time of the suit she is living in adultery and persists in her vicious course of life. *Subhayya* v. *Bhavani, 24 Ind. Cas. 390,* followed. DEBI SARAN SHUKUL *v.* DAULATA SHUKLAIN (1916) . . **I. L. R. 39 All. 234**

HINDU LAW—PARTITION.

1. ——— *Blindness—Compromise by Pardanishin Guardian—Dishonest claim—Invalidity.* An incurably blind man, unless he was born blind, is not excluded by Hindu law from inheriting nor from participating upon a partition. *Mohesh Chunder Ray* v. *Chunder Mohun Ray, 14 B. L. R. 273,* and *Murarji Gokuldas* v. *Parvatibai, I. L. R. 1 Bom. 177,* approved. A plaintiff having instituted against a pardanishin woman and her infant daughter a suit based in substance upon an allegation which was untrue and in which he had no honest belief, induced the mother to enter into a compromise on behalf of herself and her daughter. The compromise was assented to by the Court and a decree made in pursuance of it. *Held,* that the daughter was entitled in a subsequent suit to have the compromise and decree set aside. GUNJESHWAR KUNWAR *v.* DURGA PRASAD SINGH (1917).

L. R. 44 I. A. 229

HINDU LAW—PARTITION—*concld.*

2. ——— *Partition between an adopted son and a subsequently born aurasa son of a Sudra—Share of adopted son—Marriage expenses of unmarried members—Provision for, in partition-decree.* Among Sudras, on a division of the family properties between an adopted son and a subsequently born *aurasa* son, the adopted son is only entitled to one-fifth of the estate. The *obiter dictum* to the contrary in *Raja* v. *Subbaraya, I. L. R. 7 Mad. 253, 263,* not followed. The Dattaka Chandrika is not an authority on Inheritance or Partition. In partition-decrees, provision should be made for the marriage expenses of the unmarried members of the family. But such a provision should be made only for persons who are of the same degree of relationship as those who have been married at the expense of the family. The decision of the majority in *Srinivasa Ayengar* v. *Thiruvengadathaiyangar, I. L. R. 38 Mad. 556,* followed. *Narayana* v. *Ramalinga, I. L. R. 39 Mad. 537,* not followed. GOPALAM *v.* VENKATARAGHAVULU (1915) . . **I. L. R. 40 Mad. 632**

3. ——— *Partition—Evidence of separation—Institution of suit for partition by members of joint family—Unequivocal expression of intention to separate—Dismissal of suit for partition on technical grounds. Held,* that the institution of a suit for partition by one of the members of a Hindu joint family governed by the Mitakshara law amounted to an unequivocal desire of the plaintiff for separation, and effected his separation from the joint family. It was immaterial in such a case whether the co-shares assented. *Girja Bai* v. *Sadashiv Dhundhiraj, I. L. R. 43 Calc. 1031; L. R. 43 I. A. 151.* Their Lordships said:—"A decree may be necessary for working out the result of the severance, and for allotting definite shares, but the status of the plaintiff as separate in estate is brought about by his assertion of his right to separate, whether he obtains a consequential judgment or not." KAWAL NAIN *v.* BUDH SINGH (1917) . **I. L. R. 39 All. 496**

HINDU LAW—REVERSIONERS.

1. ——— *Reversioner consenting party to sale by widow and inducing purchaser to believe and act on false recitals in deed of sale purporting to show legal necessity—Subsequent suit by such reversioner challenging sale on account of absence of legal necessity, if lies—Estoppel by conduct.* The plaintiffs, reversioners on the death of a Hindu widow, sued to recover certain lands

HINDU LAW—REVERSIONERS—*concld.*

which had been purchased from the widow by the defendants. It was found that the recitals in the deed of sale were not true and there was no legal necessity, but that the plaintiffs who were consenting parties to the sale induced the defendants to believe the recitals to be true and to act on them and themselves supervised the erection of buildings on the land at defendants' cost. *Held*, that it was a clear case of estoppel by conduct. No person who is a party to the putting forward of a recital in a deed and induces another to act on it can afterwards be heard to say that that recital is not accurate and the plaintiffs' suit must fail. BHUBANESWARI DEBI *v.* HARADHAN BHATTACHARYA (1916).

21 C. W. N. 728

2. ——— *Reversioners—Widow's estate—Estate taken under the management of the Court of Wards—Alienations by the Court of Wards—Power of Court of Wards as to alienations, if absolute or limited like that of the limited owner—Court of Wards Act (Madras Act I of 1902), s. 35—Suit by reversioners for declaration—Alienations, held good—Declaration as to title of plaintiff, as reversioner, if, can be given—Conversion of rent in kind into money rent—Power of widow to commute—Evidence Act (I of 1872), s. 35—Copies of Takids, etc., made in official registers, if admissible.* Where the plaintiff, claiming to be the nearest reversioner to the last male owner of a zamindari, sued for a declaration that certain alienations, made by the Court of Wards during their management of the estate on behalf of the adoptive mother of the late zamindar on her succeeding to the estate as his heiress on his death, were not binding on the estate beyond her lifetime: *Held*, that the power of the Court of Wards under s. 35 of the Madras Court of Wards Act (I of 1902), is in terms absolute and not governed by the restrictions in the latter part of the section; that the Court of Wards had absolute powers of alienation in respect of the property taken under its charge, although the person on whose behalf the management was taken up was only a limited owner of the property like a widow; that consequently the alienations in the case were valid, without proof of necessity such as would support an alienation by a Hindu widow; and that the conversion of rents payable in kind into money rents is within the powers of a limited owner like a widow: *Held*, further, (*a*) that reversioners are not entitled to sue for a declaration that they are the nearest reversioners to an estate unless the decision of that question is incidental to the grant of some other relief to which they may be entitled; *Janakiammal* v. *Narayanasamier, I. L. R. 39 Mad. 634*, applied: and (*b*) that copies of actual letters, such as Takids from the Collector to the *Majumdar* and his replies thereto, made in registers of official correspondence kept for reference and record are admissible in evidence under s. 35 of the Indian Evidence Act, and are entitled to great consideration. *Rajah Muttu Ramaling a Setupati* v. *Periyanayagam Pillai, L. R. 1 I. A. 209, 238*, referred to. NAVANEETHA KRISHNA THEVAR *v.* RAMASWAMI PANDIA THALAVAR (1916).

I. L. R. 40 Mad. 871

HINDU LAW—STRIDHAN.

——— *Succession—Non-technical Vyavahara Mayukha—stridhana—Sons take precedence over sons' sons.* The non-technical *stridhana* of a Hindu female governed by the Vyavahara Mayukha descends to her son in priority to her son's son. BAI RAMAN *v.* JAGJIVANDAS KASHIDAS (1917).

I. L. R. 41 Bom. 618

HINDU LAW—STRIDHAN—*concld.*

HINDU LAW—SUCCESSION.

——— *Religious office—Right of females to inherit and do duty by proxy.* A female is not under the Hindu Law or custom disqualified from succeeding to a hereditary religious office (such as the office of *archaka* in a temple) and getting such duties as she may be disqualified by reason of her sex from performing, performed by proxy. *Ramasundaram Pillai* v. *Savundrathammal, 16 Mad. L. T. 423*, and *Tangirala Chiranjivi* v. *Raja Manikya Rao, 27 Mad. L. J. 179*, followed. *Sundarambal Ammal* v. *Yogavana Gurukkal, I. L. R. 38 Mad. 850*, not followed. RAJA RAJESWARI AMMAL *v.* SUBRAMANIA ARCHAKAR (1915) . . **I. L. R. 40 Mad. 105**

HINDU LAW—WIDOW.

1. ——— *Hindu widow—Gift by widow in favour of the next presumptive reversioner of entire property of husband.* It is competent to the widow of a separated Hindu, being in possession as such widow of her husband's property, to make a gift of the whole of it in favour of the next presumptive reversioner. *Bajrangi Sing* v. *Manokarnika Bakhsh Singh, I. L. R. 30 All. 1*, and *Bhupal Ram* v. *Lachma Kuar, I. L. R. 11 All. 253*, referred to. *Bakhtawar* v. *Bhagwanta, I. L. R. 32 All. 176*, distinguished. SHAM RATHI RAI *v.* JAICHHA KUNWAR (1917) . . . **I. L. R. 39 All. 520**

2. ——— *Hindu widow—Sale of husband's property by one of two widows—Right of succession of the other—Purchaser not entitled to refund of money spent on improvements.* A Hindu died leaving two widows. The widows, as a matter of convenience, divided the property of their deceased husband between them. One of the widows sold a house which had fallen to her share. She then died, and her co-widow sued to recover possession of the house. *Held*, that the purchaser could not claim a refund of money spent in improving the property so purchased. NANDI *v.* SARUP LAL (1917).

I. L. R. 39 All. 463

3. ——— *Hindu widow—Succession—Transfer by widow to reversioner—Acceleration of succession.* Where a Hindu widow transfers an estate to the nearest reversioner, such transfer, in order to have the legal effect of accelerating the succession, must be of the whole estate which the widow possesses. The doctrine does not apply to the transfer of a portion of the estate, though it be of the widow's entire interest in that portion. *Behari Lal* v. *Madho Lal Ahir Gayawal, I. L. R. 19 Calc. 236*, *Pilu* v. *Babaji, I. L. R. 34 Bom. 165*, and *Marudamuthu. Nadan* v. *Srinivasa Pillai, I. L. R. 21 Mad. 128*, referred to. The rule laid down by the Privy Council in *Bajrangi Singh* v. *Manokarniku Bakhsh Singh, I. L. R. 30 All. 1*, that a transfer made by a Hindu widow with the consent of the nearest reversioner will take effect as against the more remote reversioner, is applicable to cases of transfer for consideration. It has not been extended to a case where a transfer has been made by way

HINDU LAW—WIDOW—*concld.*

of gift. If the transfer be with the consent of the nearest reversioner, it takes effect because it affords evidence of the propriety of the transaction, in other words, it justifies the transaction on the ground of legal necessity. KHAWANI SINGH *v.* CHET RAM (1916) . **I. L. R. 39 All. 1**

4. ——— *Widow—Acceleration of estate by the widow to next reversioners—Entire interest of the widow must be accelerated—Alienation by widow not supported by legal necessity—Subsequently adopted son not bound by the alienation—Divesting of estate by adoption—A man cannot take advantage of his own fraud—Maxim.* A Hindu widow, who was in possession of her husband's property, mortgaged it with defendant No. 1 in 1893. The plaintiffs, who were next reversioners, sued to set aside the alienation on the ground that it was not supported by consideration. The suit ended in an award by arbitrators, which provided: (i) that the plaintiffs were entitled to redeem the mortgage; (ii) that defendant No. 1 was thereupon to reconvey the property to the plaintiffs; (iii) that the widow was to surrender to the plaintiffs her right, title and interest in the property and (iv) that out of the property so reconveyed the plaintiffs were to give to the widow a house and eighteen *bighas* of land for her life as maintenance. No decree was passed in terms of the award; and parties took no action under the award. In 1906, defendant No. 1 created a sub-mortgage on the property; and executed a rent-note to the sub-mortgagee. Sometime afterwards, the plaintiffs took a reconveyance of the property from the defendant No. 1 but without making any payment to him; they paid off the sub-mortgage; and they took an assignment from the sub-mortgagee of his rights under the sub-mortgage. In 1909, the widow adopted defendant No. 2 who was the natural son of defendant No. 1. Defendant No. 2 was placed in possession of the property by his natural father. The plaintiffs filed the present suit to recover possession of the property. *Held*, dismissing the suit, that the award which was the basis of plaintiffs' claim, could not be supported either as an acceleration by the widow of her interest, which to be valid required the surrender of the whole of her interest in the property, or as an alienation which was not for a legal necessity and which therefore was not binding on defendant No. 2. *Held*, further, that defendant No. 2 was not precluded from contesting the plaintiffs' claim to possession, inasmuch as he was not guilty of any fraud at all, and as he had not thereby gained any advantage in the special issue to be determined between him and the plaintiffs. An acceleration by a Hindu widow enjoying a life-estate in favour of the next reversioner is valid only if the acceleration is of the whole of her interest in the property. In an alienation by a Hindu widow of her husband's estate, the consent of the reversioners is no more than a factor in the proof of legal necessity. A true acceleration differs from alienation for legal necessity. The two legal notions are not only irreconcilable, but virtually antagonistic. MOTI RAIJI *v.* LALDAS JEBHAI (1916) . . . **I. L. R. 41 Bom. 93**

HINDU LAW—WILL.

——— *Will, construction of—Bequest of life-estate to widow and remainder to grandsons born and to be born—Madras Hindu Transfers and Bequests Act (I of 1914), s. 2, cl. (2), effect of, on—Period of distribution to future grandsons, happening after the Act—Right of all grandsons born during widow's life, to take—Vested interest of grandson existing on the date of will.* A Hindu bequeathed by his will dated 1905 a life-estate to his widow and an absolute estate thereafter to *S*, a son of his daughter then born, and to other sons of the daughter that might be born thereafter. The testator died in 1906 and *S* died in 1909. In a suit by *S*'s widow against the testator's widow and another son of the daughter born during the course of the suit for a declaration that the plaintiff was solely entitled to the estate after the death of testator's widow and for an injunction to restrain the widow from wasting the estate, and alienating the same: *Held*, on a construction of the will, (i) that the testator by interposing a life-estate intended *all* his grandsons to take his estate, who might be born before the death of the widow, which was the time fixed for distribution; (ii) that by s. 2, cl. (2), of Madras Act I of 1914, the bequest in favour of the unborn grandsons was good as the disposition in their favour was, under the will, to take effect only after the date of the Act; and (iii) that as the plaintiff's deceased husband had a vested interest under the bequest she was entitled to maintain the suit and to a share in the estate *along* with other grandsons of the testator who might be born before the death of the testator's widow. *Bhagabati Barmanya* v. *Kalicharan Singh, I. L. R. 38 Calc. 468*, referred to. VENKAYAMMA *v.* NARSAMMA (1916). **I. L. R. 40 Mad. 540**

HINDU SON.

——— **undivided, liability of, for debt of bankrupt—**

See BANKRUPTCY **I. L. R. 40 Mad. 581**

HINDU TRANSFERS AND BEQUESTS ACT (MAD. I OF 1914).

See HINDU LAW—GIFT. **I. L. R. 40 Mad. 818**

HINDU WIDOW—

See HINDU LAW—WIDOW.

HINDU WILLS ACT (XXI OF 1870).

——— *Construction of will, testator's intention—Succession Act (X of 1865), s. 82, a bequest "to my daughter on attaining majority," whether creates an absolute or limited interest—S. 111, gift over to brother in case daughter dies childless—Whether the gift can take effect if the daughter does not die childless before the estate is distributable—The period of distribution, whether at the date of the daughter's attaining majority or of the death of the daughter childless—Meaning of the word santan, whether limited to male descendants or means issue generally—Reversionary interest, expectant on the happening of a specified uncertain event, if can be sold in execution.* Plaintiff had a brother *U* and a step-brother, and each had one-third share in ancestral property which was the subject-matter of the suit. *U* made a will bequeathing his share to his daughter and appointing plaintiff as executor, who was to make over the estate to the daughter on her attaining majority. There was a provision in the will that if the daughter died childless, then the executor,

HINDU WILLS ACT (XXI OF 1870)—*concld.*

i.e., the plaintiff, would get the properties in *U*'s share. Before probate had been issued the whole property was sold in execution of a money-decree, under which plaintiff said, he alone was liable. Plaintiff brought the present suit to establish his title to one-third of the property which, he said, he inherited under his brother *U*'s will. Plaintiff alleged that the original share which he inherited from his father alone passed under the sale, but the reversionary interest in the one-third share which he acquired under his brother's will could not pass by the sale: *Held*, that under the Hindu Wills Act, in which are incorporated some of the provisions of the Indian Succession Act, the property did not pass to the plaintiff. Under s. 82 of the Succession Act, the daughter took an absolute interest, as there was nothing in the will to cut down the clear term of the gift "to my daughter on attaining majority." The principle laid down in *Bhobotarini Debi* v. *Peary Lal Sanyal, I. L. R. 24 Calc. 646*: s. c. *1 C. W. N. 578*, followed. Under s. 111 of the Succession Act, the gift over, in favour of the plaintiff, must take effect before the period of distribution. It was impossible to say that the period of distribution in this case would be the death of the daughter unless it could be held that the daughter took less than an absolute interest. As the daughter took an absolute interest, the period of distribution under the terms of the will could not be postponed later than either the date of the death of the testator or the date when the daughter attained majority, whichever event happened later. The gift to the plaintiff could take effect if the daughter died during the testator's lifetime or if she died during her minority. The daughter having survived the testator and having attained majority, the plaintiff took no interest in the one-third of the property under the will: *Held*, further, that if the plaintiff got a reversionary interest expectant on the death of his niece to one-third of the property under *U*'s will, that interest could be sold, dealt with, and taken in execution without the will being proved, and that interest passed by the sale in execution to the defendants. *Santan* (सन्तान) means "issue" generally, and is not limited to male issue. KUMUD KRISHNA MANDAL *v.* JOGENDRA NATH SARKAR (1917).

21 C. W. N. 854

HIRE-PURCHASE AGREEMENT.

———————— *Agreement to hire machinery, whether conveyance or agreement—Stamp duty—Stamp Act (II of 1899), s. 2 (10), Sch. I, art. 5, cl. (c).* A hire-purchase agreement not being an agreement to purchase but simply an agreement to hire the machinery in question with an option on the part of the hirer to purchase, comes within the meaning of Art. 5, cl. (*c*) of Sch. I to the Stamp Act, and is, therefore, liable to a stamp duty of eight annas. *Helby* v. *Matthews*, *[1895] A. C. 471*, referred to. LINOTYPE AND MACHINERY, LD., AND THE WINDSOR PRESS OF CALCUTTA, *In re* (1916) . **I. L. R. 44 Calc. 72**

HOLIDAYS.

———— **judgments pronounced on—**

See APPEAL IN FORMA PAUPERIS.

I. L. R. 40 Mad. 687

HOSTILE FIRMS.

———— **status of—**

See CONTRACT WITH ALIEN ENEMY.

I. L. R. 41 Bom. 390

HOSTILE FOREIGNERS' TRADING ORDER, 1914.

See CONTRACT WITH ALIEN ENEMY.

I. L. R. 41 Bom. 390

HOUSE-DRAIN.

See PUBLIC DRAIN.

I. L. R. 44 Calc. 689

HOUSE-SITES.

See MIRASI VILLAGE.

I. L. R. 40 Mad. 410

HUNDI.

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), s. 22.

I. L. R. 39 All. 86

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), ss. 64, 76.

I. L. R. 39 All. 364

HUSBAND.

———— **liability of—**

See WIFE'S COSTS.

I. L. R. 44 Calc. 35

HUSBAND AND WIFE.

See DIVORCE . **I. L. R. 44 Calc. 1091**

See DIVORCE ACT (IV OF 1869), s. 14.

I. L. R. 41 Bom. 36

HYPOTHECATION DECREE.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 120, 132.

I. L. R. 39 All. 74

I

IMMORAL PROPOSAL.

See LURKING HOUSE-TRESPASS.

I. L. R. 44 Calc. 358

IMMOVEABLE PROPERTY.

See SALE OF IMMOVEABLE PROPERTY.

INAM.

See ESTATES LAND ACT (MAD. I OF 1908), S. 3 (*2*) (*d*).

I. L. R. 40 Mad. 389

See ESTATES LAND ACT (MADRAS ACT I OF 1908), SS. 3 (*2*) AND 8.

I. L. R. 40 Mad. 664

See REGISTRATION ACT (XVI OF 1908), S. 17. . **I. L. R. 41 Bom. 510**

———— **distinction between resumption and enfranchisement of—**

See CHARITABLE INAMS.

I. L. R. 40 Mad. 939

———————— *Shrotriyam—Enfranchisement, effect of—Right of grantee to quarry stones—Right of Government to levy royalty or seigniorage fees—Crown grants, rule of, construction of—Acts and declarations of Government—Declarations and*

INAM—*concld.*

findings of Inam Commissioner, effect of. Where a village was granted as a shrotriyam inam in A.D. 1750 by the Nawab of Carnatic and was enfranchised by the Government in 1832, and it appeared that the Government acquired since enfranchisement some lands in the village under the Land Acquisition Act on payment of compensation to the inamdar and on another occasion purchased from him stones quarried by him in the village, but subsequently the Government levied royalty or seigniorage fee on stones quarried by the inamdar in the inam village: *Held*, that the inamdar acquired under the grant the free-hold in the lands subject only to the payment of the quit-rent fixed thereon, and that the Government was not entitled to levy a royalty or seigniorage fee on stones quarried in the village. In construing the words of a grant, the ordinary rule is that the same principles of common sense and justice must apply whoever may be the grantor. Where the words are not sufficiently clear for gathering the intention of the grant, then the doctrine "that if the king's grant can endure to two intents, it shall be taken to the intent that makes most for the king's benefit" may perhaps apply. The primary duty of the Court is to try to give a meaning to the document evidencing the grant and to see whether by itself it is not self-contained and plain. When the deed of grant stated, "A perpetual shrotriyam was granted" and that the grantee was "to appropriate to his own use the produce of the seasons," etc. *Held*, that the grant was unambiguous and clear and conveyed all that the grantor had in the soil. The title-deeds of the Inam Commissioner confer no higher title than what was originally granted, but any declaration or finding by the Inam Commissioner regarding the nature and extent of the grant will bind the Government. *Gunnaiyan* v. *Kamakchi Ayyar, I. L. R. 26 Mad. 339*, referred to. *Hari Narayan Singh* v. *Sriram Chakravarti, L. R. 37 I. A. 136*, distinguished. THE SECRETARY OF STATE FOR INDIA *v.* SREENIVASA CHARIAR (1916) . **I. L. R. 40 Mad. 268**

INAM COMMISSIONER.

———— **declaration and findings of, effect of—**

See INAM . **I. L. R. 40 Mad. 268**

INAMDAR.

1. ———————— *Jodi payable to Government—Right of Government to a first charge—Assignment of jodi by Government—Right of assignee to a charge—Assignment of jodi to a zamindar or mittadar under permanent sanad—Right of zamindar or mittadar to a charge.* Jodi payable by an inamdar to the Government, where it has not been assigned, is recoverable by the Government as revenue and is a first charge on the interest of the inamdar. A zamindar or mittadar, who under his sanad has a right to collect jodi payable by an inamdar to the Government, has no charge for arrears of jodi on the interest of the inamdar. *Per* WALLIS, *C.J.*—Where the Government assigned its revenue to an inamdar, the latter did not acquire a charge upon the land but was left to recover rent from the occupiers under the Madras Rent Recovery Act (VIII of 1865). *Per* SESHAGIRI AYYAR, *J.* If the Government assigned the right to collect jodi or other revenue *as such*, the assignee would have a first charge: he would be entitled to the security which the Government had

INAMDAR—*concld.*

although he might not be entitled to all the statutory remedies which the assignor had. Case law on the subject reviewed. SUBBAROYA GOUNDAN *v.* RANGANADA MUDALIAR (1915).

I. L. R. 40 Mad. 93

2. ———————— *Suit to recover assessment from tenant—Tenant's liability to pay customary rent—Judi—Limitation Act (IX of 1908), Sch. I, Art. 131—Recurring right—Limitation—Demand and refusal.* Lands situated in Inam villages not being in the actual possession of Inamdars themselves and falling under the calculation of Government Judi are liable in turn to pay customary rent assuming that there has been no survey and assessment or contractual rent agreed upon to the Inamdars who are directly liable to Government for the Judi. The payment of assessment is a recurring right falling within the contemplation and language of Art. 131 of the first Schedule of the Limitation Act (IX of 1908). In order that such a recurring right should be time-barred, it is necessary for the defendant to show that there has been a definite demand and refusal. Mere omission on the part of the person having such right to exercise it will not start a period of adverse possession under the Article. GANESH VINAYAK *v.* SITABAI (1916).

I. L. R. 41 Bom. 159

INDIAN ARMY OFFICER.

See CIVIL PROCEDURE CODE (1908), s. 60.

I. L. R. 39 All. 308

INDIAN COUNCILS ACT, 1861.

———— **s. 23—**

See CONTRACT WITH ALIEN ENEMY.

I. L. R. 41 Bom. 390

INFORMANT.

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 650

INHERENT JURISDICTION.

See REMAND . **I. L. R. 44 Calc. 929**

INHERITANCE.

See HINDU LAW—INHERITANCE.

See BURMESE LAW.

I. L. R. 44 Calc. 379

See CUSTOM . **I. L. R. 44 Calc. 749**

———— **Sudra ascetic, right of, to—**

See HINDU LAW—ADOPTION.

I. L. R. 40 Mad. 846

INJUNCTION.

———— **suit for—**

See TRADE-NAME, INFRINGEMENT OF.

I. L. R. 41 Bom. 49

INJURED PERSON.

See SPECIFIC RELIEF ACT (I OF 1877), S. 45 . . **I. L. R. 40 Mad. 125**

INSOLVENCY.

See PROVINCIAL INSOLVENCY ACT (III OF 1907).

1. ———————— *Debtor and creditor—Adjudication—Debtor presenting his own petition—Application for discharge—Abuse of process of Court—Jurisdiction to annul adjudication—Presidency Towns Insolvency Act (III of 1909), ss. 14, 15, 21,*

INSOLVENCY—*contd.*

38—Rules of the Insolvency Act, 1909, r. 142 (a). Where debtors were adjudicated insolvents and an order for annulment of that adjudication was made, and the debtors subsequently presented their petition to be again adjudicated insolvents on the same materials and in respect of the same debt and the same creditors as in their prior application for adjudication. *Held*, that the subsequent application to be adjudged insolvents was an abuse of the process of the Court and that the Court had jurisdiction to annul the latter adjudication in insolvency. *Ex parte Painter*, [*1895*] *1 Q. B. 85, In re Betts*, [*1901*] *2 K. B. 39, In re Hancock*, [*1904*] *1 K. B. 585, In re Archer, 20 T. L. R. 390, Samiruddin* v. *Kadumoyi Dasi, 12 C. L. J. 445, Ponnusami Chetti* v. *Narasimma Chetti, 25 Mad. L. J. 545, Triloki Nath* v. *Badri Das, I. L. R. 36 All. 250, Re Aranvayal Sabhapathy Moodliar, I. L. R. 21 Bom. 297*, and *Uday Chand Maity*, v. *Ram Kumar Khara, 12 C. L. J. 400*, referred to. MALCHAND *v.* GOPAL CHANDRA GHOSAL (1916). **I. L. R. 44 Calc. 899**

2. ———— *Order of administration—Attachment by creditor prior to order—Sale after order—Rights of attaching creditor—Presidency Towns Insolvency Act (III of 1909), ss. 53 (1) 108, 109.* S. 53 (*1*) of the Presidency Towns Insolvency Act does not apply to an administration of the insolvent estate of a deceased person under ss. 108 and 109 of the Act. But as an attachment in this country only prevents alienation and does not confer any title or create any charge or lien on the attached property such as attaches in England upon seizure under a writ of *fi. fa.*, a creditor who has attached property in execution of a decree has no rights therein prior to sale and, upon the making of an administration order before the property is sold, the property vests in the Official Assignee, and the attaching creditor is relegated to the same position as the other creditors and the sale-proceeds are distributable rateably. *Peacock* v. *Madan Gopal, I. L. R. 29 Calc. 428, Raghunath Das* v. *Sundar Das Khetri, I. L. R. 42 Calc. 72, L. R. 41 I. A. 251*, followed. *Hasluck* v. *Clark*, [*1898*] *2 Q. B. 28*; [*1899*]] *1 Q. B. 699, Johnson* v. *Pickering*, [*1908*] *1 K. B. 1, In re Clark*, [*1898*] *1 Ch. 336, Ex parte Williams. In re Davies, 7 Ch. 314, Slater* v. *Pinder, 6 Exch. 236*; *7 Exch. 95*, considered. *Re* PREM LAL DHAR (1917).
I. L. R. 44 Calc. 1016

3. ———— *Practice—Presidency Towns Insolvency Act (III of 1909), s. 36, whether applications under, may be made ex parte—S. 112, rules framed thereunder—Rules 17, 18, 19 and 30.* According to the rules framed by the Calcutta High Court under s. 112 of the Presidency Towns Insolvency Act, applications under s. 36 may be, and are intended to be, made *ex parte*. KISSORY MOHAN ROY, *In re* (1916).
I. L. R. 44 Calc. 286

4. ———— *Presidency Towns Insolvency Act (III of 1909), ss. 33 to 37, 43—Examination of persons under s. 36—Application for examination, what should contain—Order, if may be made after insolvent's discharge—Prospect of litigation with Official Assignee, no ground for refusing order.* An application for examination of a person under s. 36 of the Presidency Towns Insolvency Act should state shortly the nature of the information likely to be given by the person sought to be examined and the dealings or properties of the insolvent to which such information will relate. The Court

INSOLVENCY—*concld.*

can, in a proper case, even after the discharge of the insolvent, make an order for the examination of a person under s. 36. There is nothing in the Insolvency Act to limit the powers of the Court under that section to the period before the insolvent's discharge, though, having regard to s. 43, it may be that the provisions of s. 36 will not be applicable to the insolvent himself after his discharge. An order for examination under s. 36 should not be refused merely because litigation may ultimately ensue between the Official Assignee and the person sought to be examined. *Re* HARIPADA RAKSHIT. *Ex parte* BINODINI DASSEE (1916). . . . **I. L. R. 44 Calc. 374**

5. ———— *Provincial Insolvency Act (III of 1907) ss. 5, 6, 15 and 16—Petition by debtor—Debtor's right to order of adjudication where all the requirements of the Act have been fulfilled—Dismissal of petition as "an abuse of process of Court" a matter to be dealt with on application for discharge.* On an application under the Provincial Insolvency Act (III of 1907) by a debtor to be declared an insolvent where all the conditions specified in the Act have admittedly been satisfied, he is entitled to an order of adjudication. This does not depend on the discretion of the Court, but is a statutory right of which he cannot be deprived by the Court on the ground that his petition is "an abuse of the process of the Court." To this effect there is a current of authority in India that the stage at which to visit with its due consequences any misconduct of a debtor is when his application for discharge comes before the Court, and not on the initial proceeding. CHHATRAPAT SINGH DUGAR *v.* KHARAG SINGH LACHMIRAM (1916). . . . **I. L. R. 44 Calc. 535**

INSOLVENCY COURT.

See CIVIL PROCEDURE CODE (1908), s. 11.
I. L. R. 39 All. 626

INSOLVENCY PROCEEDINGS.

———— *Order disallowing a claim to goods seized by the Official Assignee after adjudication—Suit to set aside the order, maintainability of.* No suit lies to set aside an order made by the Insolvent Court dismissing on the merits a claim to goods seized by the Official Assignee after adjudication. Followed in *The Official Assignee of Madras* v. *Mangayarkarasu Ammal, I. L. R. 40 Mad. 1173.* ABDUL LATHEEF *v.* THE OFFICIAL ASSIGNEE OF MADRAS (1912).
I. L. R. 40 Mad. 1173

INSOLVENT.

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), s. 18 (*3*).
I. L. R. 41 Bom. 312

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 16, 22.
I. L. R. 39 All. 204

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s. 36 . **I. L. R. 39 All. 95**

———— **execution of fictitious sale-deed by—**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s. 18. **I. L. R. 39 All. 63**

INSTALMENT DECREE.

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 2; O. XXXIV, RR. 4, 5.
I. L. R. 39 All. 532

INSTRUCTIONS.

See BARRISTER. **I. L. R. 44 Calc. 741**

INSURANCE.

See JUTE. **I. L. R. 44 Calc. 98**

INTENTION.

See LURKING HOUSE-TRESPASS.
I. L. R. 44 Calc. 358

——— **to defraud—**

See STAMP-DUTY.
I. L. R. 44 Calc. 321

——— **to mortgage—**

See EVIDENCE. **L. R. 44 I. A. 236**

INTEREST.

See CONTRACT WITH ALIEN ENEMY.
I. L. R. 41 Bom. 390

See PENALTY. **I. L. R. 44 Calc. 162**

See PRINCIPAL AND SURETY.
I. L. R. 44 Calc. 978

——— **postponing payment of—**

See MORTGAGE. **I. L. R. 44 Calc. 542**

INTERLOCUTORY APPEAL.

See PARTIES, SUBSTITUTION OF.
L. R. 44 I. A. 218

INTERNMENT.

——— **order for—**

See HABEAS CORPUS.
I. L. R. 44 Calc. 459

INTERPRETATION OF STATUTES.

See LAND ACQUISITION.
I. L. R. 44 Calc. 219

IRRIGATION BY PERCOLATION.

See MADRAS IRRIGATION CESS ACT (VII OF 1856), S. 1 (*b*).
I. L. R. 40 Mad. 58

IRRIGATION CESS ACT (MAD. VII OF 1865).

——— *Conditions necessary to entitle Government to levy water-cess—Extent of right to water—Engagement by land-holder with Government.* In this case the decision in *Prasad Row* v. *The Secretary of State for India, I. L. R. 40 Mad. 886,* was followed, on the admission of the respondent that the rights of the parties were governed by it. AMBALAVANA PANDARA SANNADHI *v.* THE SECRETARY OF STATE FOR INDIA (1917).
I. L. R. 40 Mad. 909

——— **s. 1** (*b*)—*Opinion of Collector that irrigation is beneficial, not a judicial one, revisable by Courts—"Irrigation by percolation" covers "irrigation by subsoil water."* Construing s. 1 (*b*) of the Madras Irrigation Cess Act (VII of 1865), the Full Bench *held*:—(*a*) that it is not obligatory on the Collector to certify under s. 1 (*b*) of the Act that the irrigation is beneficial, and (*b*) that the words "irrigation by percolation" mean not only irrigation by means of water flowing on the surface of the land irrigated, but cover also cases where sub-

IRRIGATION CESS ACT (MAD. VII OF 1865) —*contd.*

——— **s. 1**—*contd.*

soil water is taken by the roots of trees. *Held* also, that the opinion of the Collector that the irrigation in any particular case is beneficial to the land is not a judicial one capable of being revised by a Civil Court. *Secretary of State for India* v. *Swami Naratheeswarar, I. L. R. 34 Mad. 21,* approved. THE SECRETARY OF STATE FOR INDIA *v.* MAHADEVA SASTRIGAL (1916). **I. L. R. 40 Mad. 58**

——— **s. 1, provs. 1 and 2**—*As amended by Madras Act V of 1900—Right of Government to levy cess for irrigation purposes—Zamindaris settled at Permanent Settlement—Sanads, construction of—Cultivation extended and crop grown not customary at date of sanad—Engagement by zamindar with Government—Right to flowing water—Madras Land Encroachment Act III of 1905.* The appellants sought to recover from the Secretary of State for India, the respondent, sums of money paid under protest in respect of water cesses levied by the Government of India under Madras Act VII of 1865 (as amended by Madras Act V of 1900), the portions applicable to the case being s. 1 and prcs. 1 and 2. The lands in suit were contiguous to the river Vamsadhara, and sometime prior to the Permanent Settlement extensive works had been carried out to supply the district with water from the river, and the water was distributed throughout the district by means of branch channels and subsidiary channels ending in many instances in village tanks and reservoirs. The Government carved out of the land four zamindaris, on each of which they assessed a permanent revenue or *jumma,* and had them put up to public auction, and each purchaser received a sanad. These sanads did not mention any water rights. They contained (*inter alia*) agreements by the zamindars to encourage their ryots to improve and extend the cultivation of the land. Subject to his observing the conditions of the sanad, each zamindar was authorized to hold the zamindari in perpetuity for himself and his heirs. One of the four zamindaris (Urlam) was purchased by the appellant's predecessors-in-title at a sale for arrears of revenue and the other three were bought at various times by the Government. The sluices of only one of the channels were on the appellant's lands, but he used for irrigation purposes water from the river through all the four channels. *Held,* that the Permanent Settlement was an engagement with the Government within the meaning of pro. 1 of s. 1 of the Act VII of 1865. That the effect of the Permanent Settlement was to vest the channels with their head sluices and branch and subsidiary channels, and the tanks or reservoirs in the zamindars through or within whose zamindaris the same respectively passed or were situate, and to give the zamindar the right or easement of taking water from the river for irrigation purposes. That the zamindar on whose estate the head sluices and initial portions of each of the four channels in question were situate, obtained under his sanad the right to take water from the river (assuming that it belonged to Government), and such rights was to be measured by the size of the channel, or the nature and extent of the sluices and weirs governing the amount of water which entered the channel, and not by the purposes for which the grantor or his tenants had been accustomed to use water from the channel prior to the date of the grant. That after the water was lawfully taken into the channel the Government had no further

IRRIGATION CESS ACT (MAD. VII OF 1865) —*concld.*

———— **s. 1**—*concld.*

rights in it except as owners of the other zamindaris. That the zamindars in whose favour the sanads were made, took, subject to the customary rights of the ryot cultivators, and the rights of all holders of inams under existing inam grants and in other respects, the right's *inter se* of the several zamindars under the sanads were analogous to the rights of upper and lower riparian owners on a natural stream. That there being no evidence that more water was being taken from the river than would be justified by the sanads as construed, the cesses were wrongly levied on the appellants. The law of the Madras Presidency as to rivers and streams certainly differs in some respects from the English law; and it is quite possible that it recognizes some proprietary rights on the part of Government in the water flowing in rivers and streams. PRASAD ROW *v.* THE SECRETARY OF STATE FOR INDIA (1917). . . **I. L. R. 40 Mad. 886**

IRRIGATION CESS AMENDMENT ACT (MAD. V OF 1900).

See IRRIGATION CESS ACT (MAD. VII OF 1865), S. 1, PROVS. 1 AND 2.
I. L. R. 40 Mad. 886

IRRIGATION CHANNEL.

———— **right to obstruct flow of rain water into—**

See ESTATES LAND ACT (MAD. ACT I OF 1908), SS. 4, 27, 73 AND 143.
I. L. R. 40 Mad. 640

J

JATS.

See CUSTOM . **I. L. R. 44 Calc. 749**

JODI.

———— **assignment of, by Government—**

See INAMDAR . **I. L. R. 40 Mad. 93**

———— **payable to Government—**

See INAMDAR . **I. L. R. 40 Mad. 93**

———— **to a zamindar or a mittadar, under permanent sanad—**

See INAMDAR . **I. L. R. 40 Mad. 93**

JOINT DEBTS.

See ACCOUNTS, SUIT FOR.
I. L. R. 44 Calc. 1

JOINT FAMILY.

See HINDU LAW—ALIENATION.
I. L. R. 39 All. 485

See SALE IN EXECUTION OF DECREE.
I. L. R. 44 Calc. 524

JOINT FAMILY PROPERTY.

See HINDU LAW—JOINT FAMILY.
I. L. R. 41 Bom. 347

JOINT HINDU FAMILY.

See HINDU LAW—JOINT FAMILY.

See HINDU LAW—ALIENATION.
I. L. R. 39 All. 500

JOINT HINDU FAMILY—*concld.*

See HINDU LAW—PARTITION.
I. L. R. 39 All. 496

See PARTITION . **I. L. R. 39 All. 651**

JOINT OWNER.

See EVIDENCE . **I. L. R. 39 All. 696**

JOINT PROPRIETORS.

———— **liability of—**

See THEATRICAL PERFORMANCE.
I. L. R. 44 Calc. 1025

JOINT TRIAL.

See CRIMINAL PROCEDURE CODE, S. 439.
I. L. R. 39 All. 549

JUDGMENT.

———— **affirmed on appeal—**

See ESTOPPEL . **L. R. 44 I. A. 213**

———— **not on the merits of the case—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 13 (*b*).
I. L. R. 40 Mad. 112

———— **of the previous Judge, successor not bound to pronounce—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1908), S. 367.
I. L. R. 40 Mad. 108

———— **relevancy of—**

See EVIDENCE. . **I. L. R. 41 Bom. 1**

JUDGMENT-DEBTOR.

———— **alienation by—**

See ATTACHMENT
I. L. R. 44 Calc. 662

———— **interest of—**

See SALE IN EXECUTION OF DECREE.
I. L. R. 44 Calc. 524

JUDI.

See INAMDAR . **I. L. R. 41 Bom. 159**

See JODI.

JUDICIAL DISCRETION.

See LIMITATION **L. R. 44 I. A. 218**

JUDICIAL OFFICER.

———— **suit against—**

See JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850), S. 1.
I. L. R. 39 All. 516

JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850).

———— **s. 1**—*Suit for damages—Allegation that defendant had brought a false case against plaintiff—Rejection of plaint.* A suit for damages was filed against a judicial officer, the material allegations in the plaint being that the defendant had, on account of enmity, taken the plaintiff into custody, and had, through ill-feeling and dishonesty, brought a false charge against him under ss. 384, 165 of the Indian Penal Code. *Held*, that the plaint as framed could not be said to disclose no cause of action, so as to justify its rejection *in limine*, for which purpose it was necessary to consider the plaint only and nothing else; but it was necessary to ascertain what facts the plaintiff could prove before it was

JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850)—*concld.*

——— **s. 1**—*concld.*

possible to decide whether the case came within the purview of Act XVIII of 1850. IZZAT ALI *v.* MUHAMMAD SHARAFAT-ULLAH KHAN (1917). **I. L. R. 39 All. 516**

JURISDICTION.

See INHERENT JURISDICTION.

See ACQUITTAL. **I. L. R. 44 Calc. 703**

See ADJUDICATION. **I. L. R. 44 Calc. 899**

See ADMINISTRATION SUIT. **I. L. R. 44 Calc. 890**

See AGRA TENANCY ACT (II OF 1901), S. 79 . **I. L. R. 39 All. 455**

See CIVIL PROCEDURE CODE (1908), S. 20 (*c*) . **I. L. R. 39 All. 607**

See CIVIL PROCEDURE CODE (1908), S. 24 (*4*) . **I. L. R. 39 All. 214**

See CIVIL PROCEDURE CODE (1908), S. 115. **I. L. R. 39 All. 101**

See CRIMINAL PROCEDURE CODE, S. 110. **I. L. R. 39 All. 139**

See CRIMINAL PROCEDURE CODE, S. 145. **I. L. R. 39 All. 612**

See CRIMINAL PROCEDURE CODE, S. 195. **I. L. R. 39 All. 657**

See CRIMINAL PROCEDURE CODE, S. 576. **I. L. R. 39 All. 91**

See HABEAS CORPUS. **I. L. R. 44 Calc. 76**

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874 AS AMENDED BY BOM. ACT III OF 1910), SS. 25, 36, 63, 64. **I. L. R. 41 Bom. 23**

See JURY, TRIAL BY. **I. L. R. 44 Calc. 723**

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), S. 35. **I. L. R. 39 All. 357**

See SMALL CAUSE COURT. **21 C. W. N. 784**

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), S. 18. **I. L. R. 39 All. 297**

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), S. 233 (*k*). **I. L. R. 39 All. 469**

See WAIVER . **I. L. R. 44 Calc. 10**

——— **of Civil and Revenue Courts**—

See AGRA TENANCY ACT (II OF 1901), SS. 4, 167 . **I. L. R. 39 All. 605**

See AGRA TENANCY ACT (II OF 1901), S. 167 . . **I. L. R. 39 All. 675**

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), SS. 203 TO 207. **I. L. R. 39 All. 711**

——— **to try offence committed on high seas**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 188. **I. L. R. 41 Bom. 667**

JURISDICTION—*concld.*

1. ——— *Criminal misappropriation or breach of trust—Receipt of money and conversion at head office of a company in Madras Presidency—Loss to complainant in a district in Bengal—Jurisdiction of Court at latter place to try the offences—Criminal Procedure Code (Act V of 1898), ss. 179, 181*(2). The jurisdiction of a Court to try the offences of criminal misappropriation or breach of trust is governed by s. 181 (2) and not s. 179 of the Criminal Procedure Code. Loss, though a normal result, is not an ingredient of the offences of criminal misappropriation or breach of trust, and not, therefore, a "consequence" within the meaning of s. 179. A complaint of offences under ss. 403 and 406 of the Penal Code against an official of an Insurance Company having its head office at B in the Madras Presidency, where the money was received and the conversion took place, cannot be tried by a Court at K where loss ensured to the complainant. *Ganeshi Lal* v. *Nand Kishore, I. L. R. 34 All. 487*, and *Rambilas* v. *Emperor, (1914), Mad. W. N, 894*, followed. *Queen-Empress* v. *O'Brien, I. L. R, 19 All. 111*, and *Langridge* v. *Atkins, I. L. R. 35 All. 29*, dissented from. *Colville* v. *Kristo Kishore Bose, I. L. R. 26 Calc. 746, Emperor* v. *Mahadeo, I. L. R. 32 All. 397*, distinguished. SIMHACHALAM *v.* EMPEROR (1916). **I. L. R. 44 Calc. 912**

2. ——— *Leave to withdraw suit by the Appellate Court—Subsequent Suit—Res Judicata—Civil Procedure Codes—(Act XIV of 1882), s. 373 (Act V of 1908), O. XXXIII, r. 1.* The plaintiff brought a suit for the declaration of his title in respect of certain rights and for other reliefs. This suit was dismissed by the Court of first instance on the merits after the evidence had been gone into. The plaintiff, thereupon, preferred an appeal. At the hearing of the appeal he made an application for leave to withdraw from the suit under s. 373 of the Code of Civil Procedure, 1882, on the grounds of a formal defect and of his inability to produce the necessary evidence in time, and obtained an order in the presence of the defendants to the effect that the appeal be dismissed with costs and the plaintiff's suit be allowed to be withdrawn with leave for fresh action for the same subject-matter, if not barred. Subsequently, the plaintiff brought a fresh suit against the same parties on the same cause of action as in the previous suit. *Held*, that the ground on which the order was made by the Appellate Court was not a ground which was contemplated by s. 373 of the Civil Procedure Code and that, therefore, the order was without jurisdiction. *Kharda Coal Co., Ld.* v. *Durga Charan Chandra, 11 C. L. J. 45*, and *Mabulla Sardar* v. *Hemangini Debi, 11 C. L. J. 512*, referred to. KALI PRASANNA SIL *v.* PANCHANAN NANDI (1916) . . . **I. L. R. 44 Calc. 367**

JURISDICTION OF CIVIL COURT.

See LAND ACQUISITION. **I. L. R. 44 Calc. 219**

JURISDICTION OF HIGH COURT.

See HIGH COURT, JURISDICTION OF.

See SANCTION FOR PROSECUTION. **I. L. R. 44 Calc. 816**

——— **conviction and sentences by Mewas Agent**—

See SCHEDULED DISTRICTS ACT (XIV OF 1874), S. 7. **I. L. R. 41 Bom. 657**

JURISDICTION OF HIGH COURT—*contd.*

1. ——————— *Civil Procedure Code (Act V of 1908), s. 115; O. XXIII, r. 1—Withdrawal of suit under O. XXIII, r. 1—Notice to the other side, if necessary—Judicial order—Practice.* The High Court has power to set aside orders made under Order XXIII, r. 1, in the exercise of the powers vested in it by s. 115 of the Code of Civil Procedure. *Kharda Coal Co.* v. *Durga Charan, 11 C. L. J. 45, Mabulla* v. *Hemangini, 11 C. L. J. 512, Ram Krishna* v. *Ram Kirpanidh, 9 All. L. J. 358, Umesh Chandra Palodhi,* v. *Rakhal Chandra Chatterjee, 15 C. W. N. 666, Buratha Gunta* v. *Thurlapatti, 9 Mad. L. T. 204,* referred to. Though r. 1 of O. XXIII of the Code of Civil Procedure does not specifically require that notice of an application under it must be given to the opposite party, still it is an elementary rule of universal application and founded upon the plainest principles of justice that a judicial order which may possibly affect or prejudice any party cannot be made unless he has been afforded an opportunity to be heard. *Ajant Singh* v. *F. T. Christian, 17 C. W. N. 862,* referred to. *Bansi Singh* v. *Kishun Lall Thakur, I. L. R. 41 Calc. 632,* dissented from. RAJENDRA LAL SUR *v.* ATAL BEHARI SUR (1916).
I. L. R. 44 Calc. 454

2. ——————— *Criminal Procedure Code (Act V of 1898), ss. 185, 527, scope of—'Doubt,' meaning of—Transfer—Questions of convenience and expediency—Power of the High Court over Courts outside its territorial limits—Form of order. Held,* by the majority (WOODROFFE, *J.* dissenting). The High Court has power under s. 185 of the Criminal Procedure Code to make an order in respect of an enquiry instituted or trial commenced in a Court situated beyond its territorial limits. *Hiran Kumar Chowdhury* v. *Mangal Sen, 17 C. W. N. 761, Emperor* v. *Chaichal Singh, 9 Cr. L. J. 581,* approved. S. 185 is not restricted to proceedings instituted in a Court subordinate to the High Court where the application is made. The section invests that High Court with authority to determine the question within the local limits of whose Appellate Criminal Jurisdiction the offender actually is. Where jurisdiction is given to more Courts than one for the same offence, if a doubt arises as to the Court by which such offence should be tried, it must involve a doubt as to the suitability of one Court as compared with another from the point of view of "convenience" and "expediency." *Rajani Benode Chakravati* v. *All-India Banking and Insurance Company, I. L. R. 41 Calc. 305,* dissented from. The order should be limited to a declaration that the case should be inquired into or tried by the Court of the Chief Presidency Magistrate in Calcutta. This will leave it open to the prosecution or the applicant to take such steps as they may be advised. *Per* WOODROFFE, *J.* S. 185 does not deal with transfer or decisions on the ground of mere convenience raised by the accused but with doubt as to competency. S. 185 is not designed to cut down admitted jurisdiction but to determine cases where the facts said to constitute jurisdiction are doubtful. These provisions deal with jurisdiction and not with convenience. *Per* MOOKERJEE, *J.* The two ss. (185 and 527) have entirely different scopes. In the first place, the order under s. 527 is an executive order which may be made without opportunity afforded to the accused to be heard. In the second place, s. 527 contemplates an order for transfer, and recourse may possibly be had thereto if an

JURISDICTION OF HIGH COURT—*concld.*

order made by one High Court under s. 185 is disregarded by another. CHARU CHANDRA MAJUMDAR *v.* EMPEROR (1916). **I. L. R. 44 Calc. 595**

JURY.

See CRIMINAL PROCEDURE CODE, SS. 367, 418, 423 . **I. L. R. 39 All. 348**

JURY, TRIAL BY.

——————— *Jurymen, communication with by stranger, and by Clerk of the Crown—Police Officer's presence near jury room—Communication of deliberation by jurymen before or after case is over—Habeas corpus, writ of—Jurisdiction—Criminal Procedure Code (Act V of 1898), s. 491—Letters Patent, 1865, cls. 25 and 26—Trial, vitiation of—Practice. Per* CURIAM. It is highly undesirable that a juror should have any communication with any body who is not a juryman upon the subject-matter of the trial. But the mere fact that one of them is addressed by a stranger, to whom apparently the juryman makes no reply or whose remarks the juryman does not look upon as worthy of consideration, cannot have the effect of invalidating a trial. A mere casual question (which evidently had nothing whatever to do with the case), by a juryman to a Police officer in charge of the jury, it not even being alleged that the Police officer spoke in reply to the juryman, cannot be any ground for invalidating the trial. Though it is undesirable that a police constable should be stationed in any position in which he can hear the deliberations of the jurymen, still if the presence of the constable has not in any way affected the deliberations of the jurors, either by interfering with or inconveniencing them, the accused is not in any way prejudiced. The learned Judge was only doing his duty when he twice sent the Clerk of the Crown to the jury and asked them (in accordance with the practice in the High Court) if he could give them further assistance on any of the many points which were for their consideration, there being no less than 17 charges. The jury are ill-advised to talk with anybody except their fellow jurymen about the case. Whether the case is still going on or after the case is over, the jury would be ill-advised to have any communication with anybody except their fellow-jurymen as to what happened in the jury room. *The Queen* v. *Murphy, L. R. 2 P. C. Ap. Ca. 535,* referred to. *Per* CHAUDHURI, *J.* It is well established that a writ of *habeas corpus* is not granted to persons convicted or in execution under legal process, including persons in execution of a legal sentence after conviction on indictment in the usual course. *Ex parte Newton, 24 L. J. C. P. 148,* referred to. When the law does not allow an appeal, the accused cannot have one indirectly in this way. When there has been a miscarriage of justice, as alleged in this case, the proper course is to carry the matter to the Crown for remedy. *Queen-Empress* v. *C. P. Fox, I. L. R. 10 Bom. 176,* referred to. BONOMALLI GUPTA, *In the matter of* (1916).
I. L. R. 44 Calc. 723

JUTE.

——————— *Fariahs—Trade-usage at Chandpur—Passing of property on sale—Custody with purchaser merely as security, for advances—Insurance of that interest, benefit of—Contract Act (IX of 1872), s. 81.* When nothing remains to be done to the goods by the seller for the purpose of ascertaining the price, then *primâ facie* the pro-

JUTE—*concld.*

perty in them passes although they have not been weighed by the buyer. *Simmons* v. *Swift*, *5 B. & C. 857*, *Turley* v. *Bates*, *2 H. & C. 200*, *Shoshi Mohun Pal Chowdhry*, v. *Nabo Krishto Poddar*, *I. L. R. 4 Calc. 801*, *Martineau* v. *Kitching*, *L. R. 7 Q. B. 436*, referred to. It would be otherwise in England if the parties intended that property in the goods should not pass until the goods had been weighed. The Indian Law is the same and the provisions of s. 81 of the Contract Act do not exclude the question of intention which is laid down in the English cases as the determining factor. Where according to the usage of trade at Chandpur the sale of jute by *fariahs* is not complete until the goods are examined, selected and weighed by the company (purchaser) although stored in the godowns of the company by whom advances have been made to the *fariahs* against these goods :—*Held*, that the contract in the present case being in the first instance a contract for the sale of unascertained goods, what remained to be done by the buyer to the goods appropriated to the contract by the seller was not merely for the purpose of ascertaining the price but was also for the purpose of placing the buyers in a position to say whether and to what extent they would for their part accept the goods offered to them. That the position seemed to be that the buyer had a right to the custody of the jute as security for his advances, and that in addition while the seller had no right to sell to others, the buyer was under a corresponding obligation to buy as much of the jute as was of the requisite standard. That (though the company had insured this jute as their own) the insurance appeared to have been intended for the protection of their own interest in the jute, not for the protection of the seller's interest which they were not bound to insure. That the defendants, therefore, were entitled to apply the whole amount which they received under the policies of insurance to indemnify themselves against the loss which they themselves had actually sustained and were not bound to apply any portion of it to the benefit of the plaintiff. That there was no usage that the loss is borne entirely by the company in cases where the jute is not insured to the full extent. ABDUL AZIZ BEPARI *v.* JOGENDRA KRISHNA ROY (1916) . **I. L. R. 44 Calc. 98**

K

KANGANAM.

———— **levy of, legality of—**

See ESTATES LAND ACT (MADRAS ACT I OF 1908, SS. 4, 27, 73 AND 143.
I. L. R. 40 Mad. 649

KANUNGO.

See CONTRACT ACT (IX OF 1872), s. 23
[I. L. R. 39 All. 51, 58

KHAIRAT.

See BEQUEST **I. L. R. 41 Bom. 181**

KHAMAR LAND.

See NON-OCCUPANCY RAIYAT.
I. L. R. 44 Calc. 267

KHANA-DAMAD.

See CUSTOM **I. L. R. 44 Calc. 749**

KHATEDAR.

See LAND REVENUE CODE (BOM. V OF 1879), s. 74 **I. L. R. 41 Bom. 170**

KNOWLEDGE.

———— **evidence of—**

See HINDU LAW—ALIENATION.
I. L. R. 44 Calc. 186

L

LAND ACQUISITION.

See LAND ACQUISITION ACT (I OF 1894).

———— *Recoupment—Compulsory acquisition—Calcutta Improvement Act (Bengal V of 1911), ss. 39, 40, 41(a), 41(b), 42(a), 49(2), 68, 69, 78, 81, 122(c), 122(d)—"Street"—"Affected"—Jurisdiction of the Civil Court—Publication of a notification under s. 49(2)—Its effect—Interpretation of Statutes—Legislature, object of, must be determined as expressed in the provisions of the Statute.* The acquisition of land for the purpose of recoupment is not specified as one of the objects of the Calcutta Improvement Act and by no stretch of language can it be maintained that recoupment is one of the purposes of the Act. The trustees have not been empowered to acquire land compulsorily for the purpose of recoupment and ss. 41, 42, 78, 81, 122 or 123 of the Act do not confer any such power on them. Ss. 41 and 42 deal merely with matters which must be or may be provided for when an improvement scheme is framed; they do not directly or indirectly authorise the compulsory acquisition of any land. Cl. (*a*) of s. 41 refers to the acquisition of land required for the execution of the scheme; while s. 78 authorises the abandonment of land not required for the execution of the scheme. Ss. 78 and 81 have no connection with compulsory acquisition of land. Ss. 122 and 123 only regulate the mode in which the accounts are to be kept and do not sanction compulsory acquisition of land. S. 69 is the only section in the whole Act which deals with compulsory acquisition of land and the Board, under that section, is not competent to acquire land compulsorily for recoupment. There is no foundation for the contention that the Legislature has resorted to an indirect method to deprive private owners of their property by provisions in the Act which effectually confer on the Board a disguised authority to acquire land compulsorily for purposes of recoupment. S. 78 was not intended to be used as a cover for the arbitrary acquisition of private property for purposes of recoupment—such recoupment to be made either by way of levy of a lump sum from the owner or a periodical tax payable out of the property or by way of acquisition of the land for profitable resale hereafter. Neither s. 78 nor s. 81 necessarily implies a power of acquisition for recoupment. The intention to impose a charge on the subject must be shown by clear and unambiguous language. By the provisions of the fifth chapter only three taxes are imposed and it would be against well-known rules of construction of statutes to hold that another tax was, by implication, imposed upon the subject. In all instances where unlimited

LAND ACQUISITION—*contd.*

powers of interference are intended to be conferred on the executive authorities, the Statute puts the matter plainly and beyond dispute. *Stockton Railway Co.* v. *Barrett, 11 Cl. & Fin. 590; 65 R. R. 261, Ezra* v. *Secretary of State for India, I. L. R. 32 Calc. 605*, referred to. It is plain that "providing building site" under s. 39(*a*) does not mean buying up land already fit for building site or pulling down houses and selling the land for building site; it means, making it possible to use as building site land which cannot for various reasons be now used as building site. S. 2(*n*) shows that the expression "public street" has the same meaning as in s. 3(*37*) of the Calcutta Municipal Act. According to that definition the term "street" does not include either the abutting lands on both sides or the houses thereon. S. 41(*b*) only contemplates that the scheme shall provide for the lay out or relay out of such land in the area comprised in the scheme as may be validly acquired by or become otherwise vested in the Board. The section does not imply an obligation on the Board and corresponding authority on their part to acquire compulsorily all the lands situated in the area comprised in the scheme. S. 49(2) does not deprive the Civil Court of jurisdiction to determine whether the action of the Board is or is not *ultra vires*. It merely provides that after the publication of sanction the scheme cannot be impeached on the ground that it has not been framed and sanctioned duly, that is, in conformity with the procedure prescribed by the Act; but there is nothing in the section which takes away the jurisdiction of the Civil Court to investigate whether the action taken by the Trustees has or has not been in excess or in violation of statutory authority. This follows from a plain reading of s. 49 and is confirmed by ss. 155 and 160 which would be entirely superfluous if s. 49(2) completely barred suits of all description in the Civil Court. When local authorities are authorised to take lands from time to time for specific works, such as street widening and the land is not specified in the Act, they cannot in order by resale, to reduce the expense to the rate-payers, take more than is *bonâ fide* necessary for the purpose. The object of the Legislature must be determined as expressed in the provisions of the Statute; it is not permissible to speculate about the expressed intentions of the Legislature; nor are we concerned with the difficulties, real or imaginary, which may arise from the adoption of the expressed intentions of the Legislature. *Donaldson* v. *Mayor of South Shields Corporation, 72 L. T. 685; 68 L. J. Ch. 102*, referred to. A section which bars a suit for an act done does not prohibit a suit for an injunction to restrain the commission of an act not done but threatened to be done. *Ganoda Sundary* v. *Nalini Ranjan Raha, I. L. R. 36 Calc. 28*, referred to. Land may well be said to be "affected" by the execution of a scheme within the meaning of s. 42(*a*) when, by the construction of the improvement works, there is a physical interference with any right, public or private, which the owner is entitled to exercise in connection with that property. *Metropolitan Board of Works* v. *McCarthy, L. R. 7 H. L. 243, Directors of G. W. Ry. Co.* v. *May, L. R. 7 H. L. 283, King* v. *Halliday, [1916] 1 K. B. 738, Western Counties Ry. Co.* v. *Windsor and Annapolis Ry. Co., 7 A. C. 178, Commissioner of Public Works* v. *Logan, [1903] A. C. 355, Ex parte Jones, L. R. 10 Ch. App. 663. Randall* v. *Blair, 45 Ch. D. 139, Duke of Devonshire* v. *O'Connor, 24 Q. B. D. 468, Galloway* v. *Mayor of London, L. R. 1 H. L. 34, Hendon Local Board* v. *Pounce, 42 ChD. 602, Lynch* v. *Commissioners of the City of London, 32 Ch. D. 72, Rolls* v. *School Board of London, 27 Ch. D. 639, North London Ry. Co.* v. *Metropolitan Board of Works, 28 L. J. Ch. 909, Gard* v. *Commissioners of Sewers of the City of London, 28 Ch. D. 486, Denman & Co.* v. *Westminster Corporation, [1906] 1 Ch. 464, Kreglinger* v. *N. Patagonia Meat Co., [1914] A. C. 25*, and *Fernley* v. *Lime House Board of Works, 68 L. J. Ch. 344, Wells* v. *London, Tilbury Railway Co., 5 Ch. D. 126*, referred to. TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA *v.* CHANDRA KANTA GHOSH, (1916) . . . **I. L. R. 44 Calc. 219**

LAND ACQUISITION—*concld.*

LAND ACQUISITION ACT (I OF 1894).

See RAILWAYS ACT (IX OF 1890 AS AMENDED BY ACT IX OF 1896), S. 7. **I. L. R. 41 Bom. 291**

——— **s. 9**—*Procedure—Occupier of land sought to be compulsorily acquired—Notice.* Under s. 9, cl. (*3*) of the Land Acquisition Act, 1894, the occupier of land, concerning which a public notice has been given under cl. (*1*) of the section, is entitled to such notice as will give him, in the same manner as the persons mentioned in cl. (*2*) fifteen days, interval in which to state before the Collector the nature of his interest in the land and the particulars of his claim for compensation, etc. KRISHNA SAH *v.* THE COLLECTOR OF BAREILLY (1917) . . . . **I. L. R. 39 All. 534**

LAND ENCROACHMENT ACT (MAD. III OF 1905).

See IRRIGATION CESS ACT (MAD. VII OF 1865), S. 1, PROVISOS 1 AND 2. **I. L. R. 40 Mad. 886**

LANDHOLDER.

——— **engagement by, with Government**—

See IRRIGATION CESS ACT (MAD. ACT VII OF 1865), S. 1 AND PROVISOS 1 AND 2. **I. L. R. 40 Mad. 886**

LAND LAW IN BENGAL.

See MINERALS . **L. R. 44 I. A. 246**

LANDLORD AND TENANT.

	COL.
1. EJECTMENT	170
2. EVICTION	172
3. LEASE	172
4. RENT	173

See EVIDENCE ACT (I OF 1872), S. 116. **I. L. R. 40 Mad. 561**

1. EJECTMENT.

1. ——— *Suit for ejectment—Notice to quit—Tenancy reserving an annual rent—What notice a tenant holding an annual tenancy is entitled to—Transfer of Property Act (IV of 1882), ss. 106, 107.* The defendant's brother, one Chandu, by a registered *kabuliyat*, took a lease of 2 cottahs of land from the landlord, at an annual rental of Rs. 12 for residential purpose. On the

LANDLORD AND TENANT—*contd.*

1. EJECTMENT—*contd.*

death of Chandu, his heirs, including the defendant, continued to live on the land and, subsequently, the defendant's name was substituted in the landlord's *sherista* as tenant in respect of 2½ cottahs of land at an annual rental of Rs. 15. Thereafter, the landlord executed a registered *potta* and let out one bigha of his lands, including the defendant's portion, for a period of 39 years, to one Sheikh Fasiulla, who accepted the defendant as tenant of a portion of it. Fasiulla then transferred his interest to one Mamsa, who, subsequently, sold the same to the plaintiff. On the defendant's failure to pay rent for the 2½ cottahs of land, the plaintiff on the 10th Kartick, 1318, corresponding with the 27th October, 1911, served the defendant with a notice to vacate the land within the 30th Kartick, 1318, corresponding with the 16th November, 1911. The defendant failed to comply with this notice. The plaintiff, thereupon, brought a suit for ejectment and *khas* possession and for arrears of rent. *Held*, that the rent being an annual rent and there being nothing to rebut the presumption in such a case that the tenancy was of a character corresponding thereto, the presumption ought to be drawn that the tenancy was to be an annual tenancy. *Durgi Nikarini* v. *Goberdhan Bose, 20 C. L. J. 448*, referred to. *Held*, also, that inasmuch as there was a contract of tenancy between the plaintiff and the defendant, but there was no registered instrument as required by s. 107 of the Transfer of Property Act, this case came within s. 106 of that Act. *Held*, further, that inasmuch as this was a lease of immovable property and not for agricultural or manufacturing purposes, but for some other purpose, it must be deemed to be a lease from month to month terminable on the part of either lessor or lessee, by 15 days' notice expiring with the end of a month of the tenancy. SHEIKH AKLOO *v.* SHEIKH EMAMAN (1916)
I. L. R. 44 Calc. 403

2. ——— *"Taluka" patta, if imports permanency—Covenant by tenant to relinquish land on grantor personally requiring it, if runs with the land—Grant to be construed against grantor—Rule explained—Land encroached upon by tenant and treated by landllord as part of permanent tenancy—Tenant, if may be ejected therefrom.* If there be nothing either in the surrounding circumstances, or in the instrument which creates the interest, to show that it was intended to be otherwise, the inference is that a tenancy called "*taluka*" constitutes a permanent tenure. Where in a contract of tenancy *primâ facie* purporting to be a permanent tenancy, there was a covenant that "if the grantor had a personal necessity, the grantee would relinquish the land:" *Held*, that the covenant was in favour of the grantor personally and was not enforceable after his death by his heir. Scope of the rule that a covenant is to be construed most strongly against the grantor and most beneficially in favour of the grantee explained. The tenant aforesaid having encroached upon land belonging to the landlord, the landlord did not within the statutory period from the date of encroachment institute a suit to eject the tenant on the ground that he could not, without his consent, acquire the status of a tenant on the land encroached upon, but on the other hand treated it as part of the permanent

LANDLORD AND TENANT—*contd.*

1. EJECTMENT—*concld.*

tenancy: *Held*, in a suit for ejectment, by the heir of the grantor, that the land originally leased as well as the encroached land stood on the same footing and the tenant could not be ejected from either of them. SARODA KRIPA LAHA *v.* AKHIL BANDHU BISWAS (1917). **21 C. W. N. 903**

2. EVICTION.

——— *Eviction of tenant, effect of—Suspension of rent.* The eviction of the tenant whether from part of the demised premises or from the whole entails a suspension of the entire rent while the eviction lasts, whether the tenant remains in possession of the residue or not; the tenancy, however, is not thereby terminated, nor is the tenant discharged from the performance of his covenants other than payment of the rent, such as a covenant to repair. It is not necessary for the application of the rule, to find from how much land the tenant has been dispossessed, if it is found that he has been dispossessed from some land. To constitute an eviction, it is not necessary that there should be an actual physical expulsion by force or violence from any part of the premises. Any act of a permanent character done by the landlord or his agent with the intention of depriving the tenant of the enjoyment of the demised premises or any part thereof operates as an eviction. Therefore, whether the tenant is expelled by violence, or is obliged from the exigencies of the situation to submit quietly to the high-handed act of the powerful landlord, the result in either case is suspension of rent. DWIJENDRO NATH RAY *v.* AFTABUDDI SARDAR (1916)
21 C. W. N. 492

3. LEASE.

——— *Permanent lease of agricultural land—Covenant against alienation, voluntary as well as involuntary, with proviso for re-entry, if enforcible—Purchaser, if must be notified by lessor of intention to determine lease, before suit—Bengal Tenancy Act (VIII of 1885), s. 155, Sch. III, cl. (1), if applies—Limitation—Mortgage by lessee, sale in execution, purchase by mortgagee—Mortgagee if trespasser.* A permanent lease of agricultural land contained a covenant against sale, gift, mortgage, etc., by the lessees with a proviso for re-entry in case the land was transferred or sold by auction. The lessees having mortgaged the land, the mortgagee sued on his mortgage and in execution of the decree obtained therein had the holding sold and purchased it himself and got possession through Court on 23rd November 1898. The original lessees continued in possession of a portion of the land under a sub-lease from the purchaser. Plaintiffs who proved their right to a 12 annas share in the interest of the landlord sued the purchaser and the original lessees for ejectment on 20th March 1908. The lower Courts having decreed the suit, the purchaser only preferred this second appeal: *Held*, that the plaintiffs were entitled to recover (joint) possession to the extent of their 12 annas interest, the defendant being a trespasser and the suit which was governed by Art. 142 of Sch. I of the Limitation Act having been instituted within time. *Per* SANDERSON, *C. J.*—The assignment was not *ad invitum*, as the execution sale was

LANDLORD AND TENANT—*concld.*

3. LEASE—*concld.*

directly due to the voluntary act of the lessees. *Per* MOOKERJEE, *J.*—A covenant for re-entry by the landlord upon an involuntary sale is valid in India as in England. *Per* CURIAM.—That in the absence of any act of the Plaintiffs recognising the purchaser as a tenant, he was in the position of a trespasser and neither s. 155 nor cl. (*l*) to Sch. III of the Bengal Tenancy Act applied to the case. *Per* MOOKERJEE, *J.*—Where a covenant against alienation is coupled with a proviso for re-entry, the landlord is not limited to the reliefs by injunction or damages. That as the tenancy was of agricultural lands, s. 111, Transfer of Property Act, did not apply, and the suit was not bad because the plaintiffs did not previously notify their election to enforce the proviso. The institution of the suit itself was a sufficient manifestation of the option to treat the lease as determined. DWARKA NATH ROY CHOWDHURY *v.* MATHURA NATH ROY CHOWDHURY (1916) **21 C. W. N. 117**

4. RENT.

——— *Rent, suit for, calculated on area under cultivation, on the basis of kabuliyat, by one co-sharer only, making the other co-sharer a defendant, if maintainable —Bengal Tenancy Act (VIII of 1885), ss. 52, 188.* The plaintiffs as fractional owners sued to recover rent on a *kabuliyat* making their co-sharer who refused to join them a *pro formâ* defendant. The land was at the time of letting waste and jungly and was not measured but a certain area, was stated by guess and it was provided that the tenants would pay rent at a fixed rate per bigha when the lands would be reclaimed or the surrounding lands brought under cultivation: *Held,* that although as a general rule, all co-contractees ought to be joined as plaintiffs, a suit by one would not be bad if the others were joined as defendants and if there was good reason for not joining them as plaintiffs, and one of several joint contractees may sue to enforce his share of the obligation if the other co-contractees are joined as defendants. That the present suit was not one for additional rent for excess land within the meaning of s. 52, Bengal Tenancy Act, and was maintainable by the plaintiffs upon the *kabuliyat* under the general law and the provisions of s. 188 are not applicable to the suit. BHOSAI *v.* AMINUDDIN (1916) . . . **21 C. W. N. 371**

LAND REVENUE CODE (BOM. V OF 1879).

——— **s. 74**—*Rajinama and Kabulayat—Legal effect of Rajinama—Occupancy not subject to any equitable interest in the third party—Sale—Transfer of Property Act (IV of 1882), ss. 2 and 54—Registration Act (XVI of 1908), ss. 17 and 90.* One *C* as a registered Khatedar of certain unalienated lands executed a Rajinama on August 11th, 1904, relinquishing the Khata of the lands in favour of *D*. *D* on the same day executed a Kabulayat to the Mamlatdar undertaking to pay land-revenue in respect of that Khata. *C* had not created any valid equitable interest in any third party by way of mortgage or otherwise. In 1911, he sold the lands to the plaintiffs by a registered sale deed and the plaintiffs filed a suit for the purpose of obtaining possession from *D*. The Subordinate Judge held that in the absence

LAND REVENUE CODE (BOM. V OF 1879)—*concld.*

——— **s. 74**—*concld.*

of a registered sale deed as required by s. 54 of the Transfer of Property Act, 1882, the Rajinama could not by itself operate to transfer ownership in the property to *D*. The lower appellate Court found that by passing the Rajinama *C* intended to abandon all his interest in favour of *D* and dismissed the plaintiffs' suit. On appeal to the High Court: *Held,* confirming the decree, that the legal effect of the Rajinama was the extinguishment of the interest of *C* in the property and therefore the plaintiffs got nothing by their sale deed. MOTIBHAI JIJIBHAI *v.* DESAIBHAI GOKALBHAI (1916) **I. L. R. 41 Bom. 170**

LEASE.

See LANDLORD AND TENANT—LEASE.

See LEASEHOLD PROPERTY.

See MOKARARI LEASE.

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MADRAS I OF 1900), s. 19. **I. L. R. 40 Mad. 603**

See REGISTRATION ACT (XVI OF 1908), S. 17, SUB-S. 1 (*d*). **I. L. R. 41 Bom. 458**

——— **of mutt properties—**

See HINDU LAW—ENDOWMENT. **I. L. R. 40 Mad. 709**

——— **registration of—**

See TENANCY-AT-WILL. **I. L. R. 44 Calc. 214**

——— *Lease of Government land in writing, registered—Possession of part not given from inception of lease—Suit for damages—Time from which limitation begins to run—Limitation Act (XV of 1877), Art. 116—Failure to give possession, whether, a continuing breach—Equivocal or ambiguous acknowledgment, whether, a valid one under s. 19 of the Limitation Act (XV of 1877)—Transfer of Property Act (IV of 1882), applicability of, to Crown grants.* The plaintiff obtained in March, 1896 from the defendant, the Collector of Godavari district, acting as Agent to the Government, a lease, in writing registered, for five years, of a piece of land whose 'probable extent' was described as 777 acres. The plaintiff was given possession of only 668 acres and unsuccessfully demanded possession of the rest in July, 1896. After some correspondence the Tahsildar in 1898 communicated to the plaintiff the Collector's order that, 'pending the disposal of the dispute the collection of one-third of the *kist* (rent) should be stopped and the remaining sum collected.' The plaintiff brought this suit in 1903 for damages for non-delivery of possession of 109 acres. *Held,* (*a*) that the cause of action for breach of the covenant to give possession occurred at the inception of the lease, *i.e.*, in March, 1896 and that as more than six years had elapsed from that date, the suit was barred under Art. 116 of the Limitation Act, and (*b*) that breach of a covenant to give possession is not a continuing breach and such a covenant is not part of a covenant for quiet enjoyment which is a 'continuing covenant.' *Held,* further, that the Tahsildar's communication, which was as consistent with a temporary suspen-

LEASE—*concld.*

sion or an *ex gratia* remission of a claim for rent as with an acknowledgment of liability, was not such an unequivocal acknowledgment as is required by s. 19 of the Limitation Act. *Held*, also, that though the Transfer of Property Act is not applicable to Crown grants, like the one in question, the principle of its provision as to leases, *e.g.*, s. 108, etc., is applicable to them. *Quære:* Whether the Tahsildar or Collector had authority to acknowledge. *Per* SRINIVASA AYYANGAR, *J.*—The plaintiff was barred even if limitation be reckoned from July, 1896 when he demanded and failed to obtain possession from the Government. SECRETARY OF STATE FOR INDIA *v.* VENKAYAYYA (1915). **I. L. R. 40 Mad. 910**

LEASEHOLD PROPERTY.

See MORTGAGE . **I. L. R. 44 Calc. 448**

LEAVE OF COURT.

See MOSQUE PROPERTY, SUIT FOR.
I. L. R. 44 Calc. 258

LEAVE TO SUE.

See WAIVER . **I. L. R. 44 Calc. 10**

LEAVE TO WITHDRAW.

See JURISDICTION.
I. L. R. 44 Calc. 367

LEGAL NECESSITY.

See HINDU LAW—ALIENATION.
I. L. R. 39 All. 500

——— **proof of—**

See HINDU LAW—ALIENATION.
I. L. R. 44 Calc. 186

LEGAL PRACTITIONER.

——— *Impropriety of counsel who appeared for one party appearing in subsequent proceedings for the other—Professional honour.* It is improper on the part of a legal practitioner who has acted for one party in a dispute to act for the other party in subsequent litigation between them relating to or arising out of that dispute. It is a matter which concerns the honour of the profession. HIRA DEVI *v.* DIGBIJAI SINGH (1917) . . . **21 C. W. N. 1137**

LEGAL PRACTITIONERS ACT (I OF 1846).

——— **ss. 4, 12—**

See PLEADER . **I. L. R. 44 Calc. 290**

LEGAL PRACTITIONERS ACT (XX OF 1853).

See PLEADER . **I. L. R. 44 Calc. 290**

LEGAL PRACTITIONERS ACT (XVIII OF 1879).

——— **s. 6—**

See PLEADER . **I. L. R. 44 Calc. 290**

——— **ss. 13, 14—**

See PROFESSIONAL MISCONDUCT.
I. L. R. 44 Calc. 639

——— **ss. 13 (b) (f), 14**—*Mukhtear acting as go-between for bribing police if punishable under cl. (f)—Enquiry commenced under cl. (b) but ultimately disclosing act coming within cl. (f), if irregular—S. 13, cl. (f), enquiry under, if can be made by subordinate Court.* Where a mukhtear was found to have received a sum of money from a person

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*concld.*

——— **ss. 13, 14**—*concld.*

against whom some police cases were pending for the purpose of bribing the police and acted as a go-between: *Held*, that his action furnished reasonable cause for punishment under s. 13. cl. (*f*) of the Legal Practitioners' Act. A subordinate Court can take proceedings under s. 13, cl. (*f*) of the Legal Practitioners' Act, and even if the High Court be the only Court which can order such an enquiry, it is open to the High Court to avail itself of the inquiry already made by a subordinate Court and proceed to deal with the case itself. An enquiry by the lower Court is not irregular on the ground that the act disclosed as the result of the enquiry is found to come under s. 13, cl. (*f*), and not under s. 13, cl. (*b*). *Re* HARI PRASANNA MUKHERJEE (1917) **21 C. W. N. 516**

LEGATEE.

See ESTOPPEL . **I. L. R. 44 Calc. 145**

LEGISLATURE.

——— **object of—**

See LAND ACQUISITION.
I. L. R. 44 Calc. 219

LEGITIMACY.

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 41 Bom. 485

LESSOR AND LESSEE.

See TRANSFER OF PROPERTY ACT (IX OF 1882), s. 108I (*j*).
I. L. R. 40 Mad. 1111

LETTERS PATENT, 1865.

——— **cls. 12—**

See WAIVER . **I. L. R. 44 Calc. 10**

——— **cls. 12 and 18—**

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), ss. 7, 36, 90.
I. L. R. 40 Mad. 810

——— **cl. 15—**

See APPEAL, RIGHT OF.
I. L. R. 44 Calc. 804

See REVIEW . **I. L. R. 40 Mad. 651**

1. ——— "*Judgment*" *within the meaning of—An order of a single Judge, rejecting an application for review, if a judgment—Whether an appeal lies from such an order—Cl. 15 of the Letters Patent, whether contemplates appeals from such orders where the judgment of which review was sought was passed by two Judges.* An appeal was disposed of by a Division Bench consisting of two Judges, and an application for review of the judgment passed in the appeal was presented to one of the two Judges when the other judge had ceased to be a Judge of the Court. The application was rejected by the aforesaid Judge sitting alone and against the said order rejecting the application for review, a Letters Patent appeal was filed: *Held*, that it was not an appeal against the judgment of a single Judge within the meaning of s. 15 of the Letters Patent, because it was virtually directed against the judgment of two Judges, of which review was sought by the application. The intention of the Legislature was not

LETTERS PATENT, 1865—*concld.*

to allow appeals from such orders. KAILAS CH. SAMADDAR *v.* REBATI MOHUN ROY (1917)
21 C. W. N. 652

2. ——— *Order of remand by single Judge, setting aside decree in plaintiffs' favour for further investigation of facts, if judgment.* Plaintiff having sued the defendants for accounts in respect of two wine shops, first on the footing of his being a servant and in the alternative as partner, the first Court gave him a decree for dissolution and accounts on the finding that the defendant was partner. On appeal, the District Judge without going into the facts decided as a matter of law that defendant could not be a partner and accordingly set aside the first Court's decision and gave the plaintiff a decree for accounts against defendant as agent of one of the shops. On second appeal, a single Judge of the High Court ordered a remand to the District Judge in the view substantially that the facts must be investigated before the legal relation between the parties could be determined: *Held*, that the effect of the decision of the single Judge being to deprive plaintiff of the benefit of the decree made in his favour by the District Judge and to reopen the entire controversy between the parties, it was a judgment within the meaning of s. 15 of the Letters Patent and a further appeal lay under that section. The expression "some right or liability" in the definition of "judgment" by Sir Richard Couch in *The Justices of the Peace* v. *The Oriental Gas Co., 8 B. L. R. 433*, (according to whom the judgment may be either final, preliminary or interlocutory) is not restricted to the right in controversy in the suit itself. BEHARI LAL SAHA *v.* JNANENDRO NATH BHATTACHARYA (1917) . **21 C. W. N. 921**

——— **cls. 25, 26—**

See JURY, TRIAL BY.
I. L. R. 44 Calc. 723

——— **cl. 26—**

See COUNTERFEIT COIN.
I. L. R. 44 Calc. 477

LETTERS PATENT (N. W. P.).

——— **cl. 10—**

See CIVIL PROCEDURE CODE (1908), S. 104; O. XLIII, R. 1; O. XXI, R. 90 **I. L. R. 39 All. 191**

See CRIMINAL PROCEDURE CODE, S. 195.
I. L. R. 39 All. 147

See PROFESSIONAL MISCONDUCT.
I. L. R. 40 Mad. 69

LIBEL.

——— *Resolution of panchayat of Hindu caste community affecting member of community adversely—Question of sea voyages by Hindus—Implied exclusion from caste—Publication by Chaudhri to other caste-people under rules of the community—Privilege—Absence of proof of express malice.* In an action for libel brought by the appellant against the respondent, both of whom were members of the Agarwala Vaishya caste of Hindus, the latter was sued as chaudhri and chairman of the *panchayat* in one section of that community. The libel was contained in the following resolution passed on the 19th of June, 1910, by the *panchayat* of the community:—"It was settled by the *panches* that since B. Gobind

LIBEL—*concld.*

Das B. Bhagwan Das publicly circulated among the *biradris* and the non-*biradris* a pamphlet about the *biradri* against the practices of the *biradri* and did not attend the *panchayat* on being called to do so; these facts show that these gentlemen circulated the pamphlet simply to disgrace the *biradri*, and their not signing the *chitta*, shows that their views are against the *panchayat*; therefore it is ordered that until B. Govind Das and B. Bhagwan Das clear themselves, the family of B. Madho Das be *bartao-band*." This resolution was admittedly communicated by the respondent in his capacity of chaudhri to the chaudhri of another section of the community and to others of the caste people generally, by which action, it was alleged that the appellant and his brother were put in the position of being virtually declared to be outcastes. The defence was that the publication was part of the duty of the respondent as chaudhri, and was therefore privileged. *Held* by the Judicial Committee, that the *onus* of establishing the fact that the respondent's conduct was the outcome of some improper motive or private spite, was on the appellant and he had not discharged it. The respondent had acted in good faith in the execution of his duty and in the absence of express malice the communication of the resolution of the *panchayat* was privileged. The members of the appellant's family had notice of the meeting at which it was passed, and some of them could have attended the *panchayat*, even if the appellant himself could not do so: they were all affected by the resolution passed. *Toogood* v. *Spyring, 1 C. M. & R. 181, London Association for the Protection of Trade* v. *Greenlands*, [1916] *2 A. C. 15*, and *Adam* v. *Ward*, [1917] *A. C. 309*, referred to as enunciating the accepted rule as to privilege. To defeat or rebut privilege the law does not recognize anything short of actual or express malice in the publication of the matter which is charged to be libellous. There was no ground for supposing that there was any duty imposed on the respondent beyond properly and duly giving effect to the rules of the *panchayat*. GOVIND DAS *v.* BISHAMBHAR DAS (1917)
I. L. R. 39 All. 561

LICENSE.

See CONTRACT WITH ALIEN ENEMY.
I. L. R. 41 Bom. 390

See EASEMENTS ACT (V OF 1881), S. 60.
I. L. R. 39 All. 621

——— **for sale of drugs—**

See UNITED PROVINCES EXCISE ACT, 1910, S. 40. **I. L. R. 39 All. 107**

LIMITATION.

See ADVERSE POSSESSION.
I. L. R. 44 Calc. 425

See BOMBAY DISTRICT POLICE ACT (BOM. IV OF 1890), SS. 63 (*b*), 80 (*3*).
I. L. R. 41 Bom. 737

See CIVIL PROCEDURE CODE (ACT V OF 1908, S 92. **I. L. R. 40 Mad. 212**

See CIVIL PROCEDURE CODE (1908), O. XXII, R. 4.
I. L. R. 39 All. 551

See CIVIL PROCEDURE CODE, O. XXXIV R. 5 . . **I. L. R. 39 All. 64**

LIMITATION—*contd.*

See EXECUTION OF DECREE.
I. L. R. 39 All. 193

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 85 . **I. L. R. 39 All. 33**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 109.
I. L. R. 39 All. 200

See PRINCIPAL AND SURETY.
I. L. R. 44 Calc. 978

See REGISTRATION ACT (III OF 1877), SS. 72 (*1*), 76 AND 77.
I. L. R. 40 Mad. 759

See SALE FOR ARREARS OF REVENUE.
I. L. R. 44 Calc. 412

1. ——— *Appeal—Sufficient cause for admitting when time barred—Judicial Discretion—Abortive application for review—Settled Rule of Procedure—Abatement of suit—Ex parte order—Substitution of Party on Interlocutory Appeal—Limitation Act (IX of 1908), s. 5—Civil Procedure Code (XIV of 1882), ss. 366, 368, 371.* The judicial discretion given by s. 5 of the Indian Limitation Act, 1908, to admit an appeal after the prescribed period of limitation should be exercised if the appeal has been prosecuted with due diligence; the time occupied by an application in good faith for review, although made upon a mistaken view of the law, should be deemed as added to the period allowed for presenting the appeal. The above rule being one of procedure laid down by full Bench decisions in India, and acted on for many years, their Lordships will not interfere with it. When in the exercise of a judicial discretion a judge fails to apply a rule laid down for its exercise, the Appellate Court should either remit the case, or itself exercise the discretion. The remedy by revision given by s. 371 of the Code of Civil Procedure, 1882, when a suit has been ordered to abate, applies whether the abatement has been ordered under s. 366, consequent upon the death of the plaintiff, or under s. 368, consequent upon the death of the defendant. An order for abatement should not be made *ex parte* and without notice to the plaintiff. The substitution of a new plaintff or defendant for one stage of a suit, for instance upon an appeal as to an interlocutory order, is effective for all future stages of the suit. BRIJ INDAR SINGH *v.* KANSHI RAM (1917) **I. L. R. 44 I. A. 218**

2. ——— *Limitation Act (XV of 1877), Sch. II, Arts. 110 and 116—Suit for royalties due under a registered lease of land with the right to dig coal—Point not allowed to be taken which was not raised in the lower Courts nor in grounds of appeal to High Court or Privy Council—Form of decree where a party has refused to join as a plaintiff and has been made a defendant—Power to alter decree without an appeal.* To a suit for royalties due under a registered lease of certain land with the right to dig coal, Art. 116 of Sch. II of the Limitation Act, 1877, "for compensation for breach of a contract in writing registered" and providing a six years' period of limitation, and not Art. 110 for "a suit for arrears of rent," and giving only three years, was held to be applicable. There is a long established distinction in the Limitation Acts in favour of registered instruments and a long course of decisions in the Indian Courts in support of this interpretation of the Acts. *Ram Narain* v. *Kamta Singh, I. L. R. 26 All. 133,* dissented from. A point that as the royalty for one kist was in any case barred the amount of the decree should be reduced was held not to be open to the appellant to take, it not having been raised in either of the lower Courts, nor in the grounds of either the appeal to the High Court, or that to the Privy Council. One of the parties on refusing to join as a plaintiff was made the second defendant and included in his defence a claim for a decree against his co-defendant which the first Court gave him separately from the decree in favour of the plaintiffs. The High Court on appeal altered the form of the decree by giving a decree for the entire amount in favour of the plaintiffs, and declaring that for a named portion it was for their share, and as to the residue it was for the share of the second defendant. The second defendant did not appeal, but the principal defendant by his appeal brought the entire decree before the High Court, disputing it *in toto*. *Held*, that in the absence of any provision in the Civil Procedure Code or in any other enactment which showed clearly that the High Court had no power to make the decree it had passed, and the whole decree being before it, the High Court had jurisdiction to make the decree which should have been made by the first Court. TRICOMDAS COOVERJI BHOJA *v.* GOPINATH JIU THAKUR (1916) . **I. L. R. 44 Calc. 759**

3. ——— *Limitation Act (XV of 1877), Sch. II, Arts. 142, 144—Suit to recover land diluviated and re-formed in situ—Dispossession—Adverse possession—Continuation of possession of land while diluviated—Definition s. 3 of Limitation Act—Continuous possession of successive owners when it cannot be combined.* The appellants sued to recover *khas* possession of a 10-anna share with mesne profits in portions of certain mauzas which after being diluviated had reformed *in situ*. The question was whether the land in suit belonged to the plaintiffs' mahal, or to the principal respondents' (defendants') mahal. The suit was brought on 6th September 1904. The Subordinate Judge found in favour of the plaintiffs' title and that the suit was not barred by limitation. It was common ground that the period of limitation applicable was twelve years, the main contest being as to whether Art. 142 of Sch. II of the Limitation Act, 1877, was applicable, or Art. 144 The High Court decided the case on limitation alone holding that the suit was barred by Art. 142. *Held* by the Judicial Committee (upholding the decision of the first Court both on title and limitation), that there had not been down to September 1892 any dispossession of the plaintiffs within the meaning of Art. 142. An owner of land does not discontinue his possession of it whilst it is diluviated. Constructively it continues until he is dispossessed, and upon the cessation of the dispossession before the statutory period of limitation has elapsed, constructively it survives. *Leigh* v. *Jack, L. R. 5 Exch. D. 264, per* COTTON, *L. J.*, followed. It seemed to follow that there can be no continuance of adverse possession when the land is not capable of use and enjoyment, so long as such adverse possession must rest on *de facto* use and occupation. *Secretary of Stat for India* v. *Krishnamoni Gupta, I. L. R. 29 Calc. 518; L. R. 29 I. A. 104,* approved. In the present case beyond temporary *utbandi* cultivation there was nothing down to 1892 to show an exclusion of the plaintiffs by the Revenue authorities.

LIMITATION—*concld.*

Whether the land cultivated was the same each year or not does not appear: at any rate it was annually submerged, and there were no circumstances to link together various portions of ground so as to make the possession of a part, as it emerged, amount constructively to the possession of the whole. *Mohini Mohan Roy* v. *Promoda Nath Roy, I. L. R. 24 Calc. 256*, referred to. No dispossession having occurred (except possibly within 12 years of the commencement of the suit) Art. 144 and not Art. 142 was the article applicable. Whether or not in the circumstances of the case conduct which was insufficient to evidence dispossession can be used to evidence adverse possession available to the defendants, they failed on the ground that the period of time necessary to bring them under the protection of Art. 144 could not be made out unless to the period during which they were in possession there was added, out of the prior period when it is contended the Revenue authorities had possession, a number of years going back to 1892, and that could not be done in this case for the reason shown in the definition s. 3, that the defendants did not derive their liability to be sued "from or through" the Revenue authorities in any sense of the words. They had in fact advanced a claim adverse to those authorities and had succeeded in it. BASANTA KUMAR ROY *v.* SECRETARY OF STATE FOR INDIA (1917).
I. L. R. 44 Calc. 858

4. ———— *Payments towards debt—Court, if it can find out whether it is for principal or interest—Limitation Act (IX of 1908), s. 20.* Where payments are made towards a debt, but there is nothing to show whether they had been made in respect of principal or interest, the Court is entitled to find out on the evidence for what purpose the payments were made. HEM CHANDRA BISWAS *v.* PURNA CHANDRA MUKHERJI (1916).
I. L. R. 44 Calc. 567

LIMITATION ACT (IX OF 1871).

———— **Art. 129 and s. 29—**

See HINDU LAW—ADOPTION.
I. L. R. 40 Mad 846

LIMITATION ACT (XV OF 1877).

See HINDU LAW—ADOPTION.
I. L. R. 40 Mad. 846

———— **s. 19—**

See LEASE . **I. L. R. 40 Mad. 910**

———— **s. 22**—*Assignment of original plaintiff's rights—Addition of assignee as plaintiff—S. 22, inapplicable—Jungle or forest lands in zamindari—Presumption of ownership of kudivaram in the zamindar —Onus of proving contrary, on ryots.* The presumption, as regards waste land, jungle or forest land in a zamindari, is that the *zamindar* is the owner not only of the *melwaram* but also of the *kudivaram* and the *onus* is on the ryots to show that the *kudivaram* right is vested in them. S. 22 of the Limitation Act (XV of 1877) does not apply to a case where a plaintiff is added in the course of a suit, in consequence of assignment of rights from the original plaintiff, but is confined to cases where the new plaintiff is added or substituted in his own right so that he may himself be considered to be instituting a suit to enable him to litigate a right for himself independently of the rights of the original plaintiff. ARUNACHELLA AMBALAM *v.* ORR (1914) . . . **I. L. R. 40 Mad. 722**

LIMITATION ACT (XV OF 1877)—*concld.*

———— **s. 22**—*contd.*

———— **Sch. II, Art. 89, s. 8—**

See ACCOUNTS, SUIT FOR.
I. L. R. 44 Calc. 1

———— **Sch. II, Arts. 110, 116—**

See LIMITATION **I. L. R. 44 Calc. 759**

———— **Sch. II, Art. 116—**

See LEASE . **I. L. R. 40 Mad. 910**

———— **Sch. II, Arts. 142, 144—**

See LIMITATION **I. L. R. 44 Calc. 858**

LIMITATION ACT (IX OF 1908).

See HINDU LAW—ADOPTION.
I. L. R. 40 Mad. 846

———— **s. 5—**

See LIMITATION . **L. R. 44 I. A. 218**

———— *Delay in filing appeal—Death of party pending judgment—Legal representatives not brought on record—Minority of one of the appellants—Negligence of the guardian—Excuse of delay—Sufficient cause, a question of discretion.* *S* filed a suit against *G* in the Subordinate Judge's Court. *G* died after the hearing of the suit, but before delivery of judgment. The judgment was pronounced on the 3rd July 1913 against *G*. On the 2nd October 1913 *G*'s widow *R* filed an appeal to the District Court on behalf of her two sons *D* and *B*, of whom *B* was major but *D* a minor. The appeal was found to be beyond time by fifty days. The question being raised whether there was a sufficient cause for excuse of delay in favour of the minor appellant. *Held*, that there was no sufficient cause as *R* and *B*, the adult relatives of the minor, who were concerned to prosecute the litigation in their own interests and in the interest of the minor were negligent, remiss and careless. BABU GANESH *v.* SITARAM MARTAND (1916).
I. L. R. 41 Bom. 15

———— **s. 6, Sch. I, Arts. 182, 183—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 144. **I. L. R. 41 Bom. 625**

———— **s. 12**—*Appeal, limitation for presenting—Copies of judgment and decree applied for at different times—Both periods if to be excluded—Rule when periods overlap.* Under s. 12, cls. (2) and (3) of the Limitation Act, the appellant is entitled to a deduction of the time requisite as well for obtaining a copy of the decree as for obtaining a copy of the judgment, and if he has applied for copies of the judgment and decree at different times, both these periods should be excluded in computing the periods of limitation allowed for presenting the appeal, unless the two periods overlap partially or entirely in which case the appellant is not entitled to have a deduction of the same time twice over. RAJANI KANTA KAPALI *v.* KALI MOHAN DAS KAPALI (1916).
21 C. W. N. 217

———— **s. 15**—An attachment before judgment is not an injunction or order within the meaning of s. 15 of the Limitation Act. MUNSAR ALI *v.* ABHOYA CHARAN DAS (1917).
21 C. W. N. 1147

LIMITATION ACT (IX OF 1908)—*contd.*

——— **s. 16**—"*Proceeding,*" *meaning of, if includes suit to set aside sale—Period taken by defendant in litigation to set aside sale, exclusion of, in calculating period of limitation.* That the word "proceeding" in s. 16 of the Limitation Act is not restricted to an application for setting aside a sale but is comprehensive enough to include a suit as well as an application and the obvious intention of the Legislature was to allow an exclusion of the period during which the validity of the sale was in controversy whether the sale was impeached by a suit or by an application. PROMOTHA NATH ROY *v.* KISHORE LAL SHAHA (1916) . . **21 C. W. N. 304**

——— **ss. 18, 20, 21; Sch. I, Arts. 65, 73, 115**—

See PRINCIPAL AND SURETY.
I. L. R. 44 Calc. 978

——— **s. 19**—*Letter of acknowledgment, construction of—Conditional acknowledgment, operation of—Performance of condition, necessity for—Contract not to plead limitation, legality of—Contract Act (IX of 1872), s. 23—Estoppel against statute of limitation.* The plaintiff filed a suit on the 19th September 1912, to recover damages for breach of an oral contract by the defendant, of which performance was due in 1906, and relied on a letter, dated 20th September, 1909, written by the defendant to the plaintiff as saving the bar of limitation. The letter was to the effect that, if certain arbitrators should decide that the defendant should pay any amount, he would immediately pay, but, that if the arbitrators failed to decide, the plaintiff might sue and that the defendant would not plead limitation. The arbitration failed. The plaintiff sued as aforesaid on the 19th September 1912, but the defendant pleaded limitation in bar of the suit. *Held,* (i) that the letter amounted only to a conditional acknowledgment; (ii) that where there is a promise to pay on a condition, that condition in order that the promise may operate as an acknowledgment, must be fulfilled; *In re River Steamer Company, L. R. 6 Ch. App. 822, Maniram Seth* v. *Seth Rupchand, I. L. R. 33 Calc. 1047,* and *Arunachella Row* v. *Rangiah Appa Row, I. L. R. 29 Mad. 519,* referred to; (iii) that the plaintiff was not entitled to a deduction of time which elapsed between the date of the agreement to refer to arbitration and the date of the failure of the arbitration; (iv) that an agreement by a debtor not to raise the plea of limitation is void under s. 23 of the Contract Act, as it would defeat the provisions of the Limitation Act; and (v) that parties cannot estop themselves from pleading the provisions of the statute of limitation. *Sitharama* v. *Krishnasami, I. L. R. 38 Mad. 374,* referred to. RAMAMURTHY *v.* GOPAYYA (1916).
I. L. R. 40 Mad. 701

——— **ss. 19 and 20**—*Endorsement of part-payment recorded by creditor and signed by debtor—Endorsement, good as an acknowledgment of liability under s. 19.* A payment made by a mortgagor who was able to write, was recorded on the back of the mortgage bond by a servant of the creditor and signed by the debtor. The endorsement ran as follows:—"Rs. 378 paid towards this document, K. V. Subbarayudu." Nearly Rupees 1,500 were due on the date of payment. It did not appear whether the payment was made towards principal or towards

LIMITATION ACT (IX OF 1908)—*contd.*

——— **ss. 19 and 20**—*concld.*

interest: *Held,* that the endorsement amounted to an acknowledgment of liability within the meaning of s. 19 of the Limitation Act, though the payment was not good as a part-payment within the meaning of s. 20 of the Act. The scope of ss. 19 and 20 pointed out. *Joganadha Sahu* v. *Rama Sahu, 17 Mad. L. T. 80,* followed. VENKATAKRISHNIAH *v.* SUBBARAYUDU (1916).
I. L. R. 40 Mad. 698

——— **s. 20**—

See LIMITATION **I. L. R. 44 Calc. 567**

——— *Part-payment—Payment—recorded by endorsements in the handwriting of the person receiving—Endorsement only signed by the debtor, whether sufficient acknowledgment.* To save the suit from being barred by limitation, the plaintiff relied on part-payments made by the defendant. The part-payments were recorded by endorsements which the plaintiff admitted were in his handwriting, but he contended that the endorsement being signed by the defendant was a sufficient acknowledgment within s. 20 of the Limitation Act, 1908. *Held,* that the fact of payment recorded being not in the handwriting of the person making the payment the provisions of the section were not satisfied. *Santishwar Mahanta* v. *Lakhikanta Mahanta, I. L. R. 35 Calc. 813,* applied. NIWAJKHAN NATHANKHAN *v.* DADABHAI (1916).
I. L. R. 41 Bom. 166

——— **s. 28; Sch. I, Arts. 124, 144**—*Religious endowment—Adverse possession of sarbarakar—Suit by descendant of original dedicator to oust son of sarbarakar.* Where a person had been appointed in 1899 by a Revenue Court *sarbarakar* of certain endowed property and had remained in possession until 1914, when he died, it was held that a suit brought in 1915 by a descendant of the original dedicator to evict the son of the appointee of 1899 and to have herself declared *sarbarakar* of the endowed property was barred by limitation. *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram, I. L. R. 23 Mad. 271,* followed. RAM PIARI *v.* NAND LAL (1917) . . . **I. L. R. 39 All. 636**

——— **Sch. I, Art. 11**—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS. 278, 282, 283, 287.
I. L. R. 41 Bom. 64

——— *Attachment and sale of moveables—Dismissal of claim petition—Suit for declaration and value of moveables, within one year of dismissal of claim petition but more than a year after attachment, governed by Art. 11 of the Limitation Act—Civil Procedure Code (Act V of 1908), O. XXI, r. 63, nature of suits brought under.* The plaintiff, whose moveable property was attached in execution of a decree against a third party, was unsuccessful in his claim petition and then filed the present suit more than one year after the date of the attachment but within one year of the date of the order dismissing his claim petition. In his plaint he prayed for a decree establishing his right to his moveables and directing the first defendant at whose instance the moveables were attached, to pay him the value thereof: *Held,* that the suit was within time, that it was a suit contemplated by O. XXI, r. 63, Civil

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Art. 11—*concld.*

Procedure Code, and that it was governed by Art. 11 of the Limitation Act: *Held*, further, that the words "to establish the right which he claims to the property" which occur both in Art. 11 and in O. XXI, r. 63, Civil Procedure Code, are wide enough to cover not only a suit for a declaration, but also one for relief consequential on such declaration. Nature of suits under O. XXI, r. 63, considered. *Kishori Mohun Roy* v. *Hursook Dass, I. L. R. 12 Calc. 696*, and *Kunhiamma* v. *Kunhunni, I. L. R. 16 Mad. 140*, followed. *Phul Kumari* v. *Ghanshayam Misra, I. L. R. 35 Calc. 202*, distinguished. BASIVI REDDI *v.* RAMAYYA (1916).

I. L. R. 40 Mad. 733

Sch. I, Arts. 29, 36—*Execution of decree—Civil Procedure Code (1908), s. 73—Money rateably distributed amongst decree-holders, to which they were subsequently declared not to be entitled—Suit to recover money so distributed—Limitation.* One *S* brought a suit for money against *N* and *B* and attached before judgment a quantity of grain in their possession. Thereupon one *M*, from whom the grain had been purchased, objected to the attachment setting up a lien on the grain for unpaid purchase-money. The Court allowed *M*'s objection holding that *M* had a lien to the extent of Rs. 2,000, whereupon *S* brought a suit for a declaration that *M* had no lien at all. The property being of a perishable nature was sold by the Court and the proceeds were deposited in Court. The suit of *S* against *M* was decreed by the Court of first instance on the 25th of June, 1912. Thereafter certain other decree-holders of *N* and *B* applied for rateable distribution under s. 73 of the Code of Civil Procedure, and the Court made the order asked for and paid the sale proceeds of the grain rateably to the decree-holders and *S* on dates between the 19th and the 26th of September, 1912. But the declaratory decree obtained by *S* was reversed on appeal on the 24th of September, 1912, and the decree of the lower Appellate Court was affirmed in second appeal on the 30th of April, 1914. In June and July, 1915, *M*'s son brought suits to recover by virtue of his lien the amounts paid to the various decree-holders. *Held*, that the suits were not barred by limitation, and that neither Art. 29 nor Art. 36 of the first Schedule to the Limitation Act was applicable to the suits. *Yellammal* v. *Ayyappa Naick, 23 Mad. L. J. 519, Rajputana-Malwa Railway Co-operative Stores, Limited* v. *The Ajmere Municipal Board, I. L. R. 32 All. 491*, and *Ward & Co.* v. *Wallis*, [*1900*] *1 Q. B. 675*, referred to by WALSH, J. RAM NARAIN *v.* BRIJ BANKE LAL (1917) . **I. L. R. 39 All. 322**

Sch. I, Arts. 30, 31, 115—

See LOSS OF GOODS.

I. L. R. 44 Calc. 16

Sch. I, Arts. 48 and 49—*Suit for goods misappropriated—Contract Act (IX of 1872), ss. 108 and 178.* A commission agent employed to sell a jewel belonging to the plaintiff wrongfully pledged it in 1907 for Rs. 175 to the defendant who lent the amount *bonâ fide* without any knowledge of the plaintiff's ownership. Plaintiff coming to know of the wrongful pledge in 1909, sued in 1911 for the recovery of the jewel or its value: *Held*, (i) that the suit was in time and

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 48 and 49—*concld.*

Art. 48 and not Art. 49 of the Limitation Act was applicable and time began to run from 1909 when the plaintiff came to know in whose possession the jewel was, and (ii) that as the defendant was a pawnee in good faith from one who had juridical possession of the jewel, the plaintiff was not entitled to recover the jewel without paying the defendant, the amount due to him on the pledge. "Possession" in s. 178 of Contract Act (IX of 1872) means juridical possession and not custody. *Rameshar Chaubey* v. *Mata Bhikh, I. L. R. 5 All. 341, Ram Lal* v. *Ghulam Hussain, I. L. R. 29 All. 579*, and the observations of BACHELOR, *J.*, in *Nandlal Thakersey* v. *The Bank of Bombay, 12 Bom. L. R. 316, 335*, followed. SESHAPPIER *v.* SUBRAMANIA CHETTIAR (1916).

I. L. R. 40 Mad. 678

Sch. I, Arts. 62 and 120—*Suit by one part-owner of a jaghir against another who was also manager—Suit for account and recovery of income—Nature of suit—Suit in a District Munsif's Court for one year's income—Plaint returned for presentation to proper Court—Plaint, not represented—Subsequent suit in a District Court for income due for previous years—Civil Procedure Code (Act V of 1908), O. II, r. 2, suit, if, barred under.* The plaintiff and the defendant were co-sharers in a jaghir of which the latter was appointed by the Government as manager. The former sued the latter in a District Munsif's Court for his share of the net income due for the year 1912, but the plaint was returned for presentation to the proper Court as the valuation of the suit exceeded the pecuniary limits of the jurisdiction of the said Court; the plaintiff did not represent the plaint in any Court but subsequently instituted the present suit in 1913 in the District Court for an account and recovery of his share of income due for the years 1905 to 1907. The defendant pleaded that the suit was barred by limitation and by O. II, r. 2 of the Civil Procedure Code. *Held*, that the suit was one for an account which was governed by Art. 120 and not Art. 62 of the Limitation Act, and that the suit was not barred by limitation. *Muhammad Habibullah Khan* v. *Safdar Husain Khan, I. L. R. 7 All. 25*, followed. *Held*, also, that the suit was not barred under O. II, r. 2 of the Civil Procedure Code. SUBBA RAO *v.* RAMA RAO (1916).

I. L. R. 40 Mad. 291

Sch. I, Arts, 64, 89, 115—*Suit by principal against agent for recovery of money found due on adjustment of accounts—Limitation.* A suit contemplated by Art. 89 of Sch. I of the Limitation Act is a suit in which accounts have to be taken. Where an account has been rendered, Art. 89 has no application. Where an account has been taken and adjusted and a specific sum has been found due from the agent to the principal, the principal becomes entitled to sue forthwith for recovery of that money, and the position is not altered even if the agent continues thereafter to hold his office as agent of that principal. Either Art. 64 or Art. 115 applies to such a suit. KESHO PROSAD SING *v.* SARWAN LAL (1915) . . . . **21 C. W. N. 591**

Sch. I, Art. 85—*Limitation*—"*Mutual, open and current account, where there have been reciprocal demands between the parties.*"

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Art. 85—*concld.*

Held, that an account with a bank which commenced by the customer borrowing money from the bank, and which at no time showed a balance in favour of the customer, was not "a mutual, open and current account, where there have been reciprocal demands between the parties" within the meaning of Art. 85 of the first schedule to the Indian Limitation Act, 1908. *Ram Pershad* v. *Harbans Singh, 6 C. L. J. 158*, and *Hajee Syud Mahomed* v. *Ashruf-oon-nissa I. L. R. 5 Calc. 759*, referred to. BANK OF MULTAN LIMITED *v.* KAMTA PRASAD (1916) **I. L. R. 39 All. 33**

Sch. 1, Art. 97—*Money due on an existing consideration which afterwards fails—Limitation.* Defendant No. 1 agreed with the plaintiff in September 1908, for a price, to procure from defendant No. 2 a re-conveyance of a house to the plaintiff. In November 1908, defendant No. 2 conveyed the house to *V*. In 1910, *V* sued to recover possession of the house from the plaintiff and obtained a decree in July 1911. The plaintiff sued in January 1912 to recover the consideration money. The lower Courts held that the suit was within time under Art. 97 of the first Schedule to the Indian Limitation Act (IX of 1908). On appeal: *Held*, that the suit was time-barred even under Art. 97, for after the sale to *V* defendant No. 1 could not have had anything to do with the house and the possession which the plaintiff was allowed to retain must have been on *V*'s sufferance. GULABCHAND BALARAM *v.* NARAYAN (1916). **I. L. R. 41 Bom. 31**

Sch. I, Art. 109—*Usufructuary mortgage—Suit by mortgagee for possession and mesne profits—Limitation.* Where a usufructuary mortgagee is wrongfully kept out of possession of the mortgaged property, his proper remedy is a suit for possession and for mesne profits. As regards the latter remedy the period of limitation applicable is that prescribed by Art. 109 of the first schedule to the Indian Limitation Act, 1908. RAM SARUP *v.* HARPAL (1916). **I. L. R. 39 All. 200**

Sch. 1, Art. 115—

1. ——— *Limitation—Principal and agent—Broker—Suit to recover commission.* The relation between a broker and the persons for whom he acts is that of agent and principal. Unlike the factor, he is not entrusted with the custody and apparent ownership of the goods, but he is a mere negotiator to effect business and is paid for his services a commission on the sales resulting from his efforts. Where the contract is not in writing, its terms are to be inferred from the course of dealings between the parties. Hence where a broker, between whom and his employer the contract was that he would be paid his commission at certain rates upon the date of the delivery of goods, sued to recover commission due to him: *Held*, that the suit was one for compensation under a contract for services rendered, which, for purposes of limitation was governed by Art. 115 of Sch. I to the Indian Limitation Act, and was not one for wages within the meaning of Art. 102 of the said Act. *Ganesh Krishna* v. *Madhavarav Ravji, I. L. R. 6 Bom. 75, Parbutty Nath Roy Chowdhry* v. *Madho Paroe, I. L. R. 3 Calc. 276, Nobocoomar Mookhopadhaya* v. *Siru Mullick, I. L. R. 6 Calc. 94*, and *Nistarini Debi* v. *Chandi Dasi Debi, 12 C. L. J. 423*, referred to. SUSHIL CHANDRA DAS *v.* GAURI SHANKAR (1916) . . . **I. L. R. 39 All. 81**

2. ——— To a suit against a surety guaranteeing a promissory note payable on demand, Art. 115 and not Art. 65 applies. SREENATH ROY *v.* PEARY MOHAN MOOKERJEE (1896) . . . . **21 C. W. N. 479**

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Art. 115—*concld.*

Sch. I, Art. 116—*Principal and agent—Agent bound to render accounts at stated periods—Suit for accounts against heir of agent—Limitation.* An agent for the management of zamindari property was appointed by a registered mukhtarnama, one of the conditions of the appointment being that the agent should render accounts every six months. The agent died, and the principal sued his heirs to recover a sum of money alleged to be due in respect of a period from 1891 to 1911. *Held*, that Art. 116 of the first schedule to the Limitation Act, 1908, applied, and that the plaintiff was not entitled to get accounts for a period longer than six years before suit. *Jhapajhannessa Bibi* v. *Bama Sundari Chaudhurani, 16 C. W. N. 1042*, followed. MATHURA NATH *v.* CHEDDU (1917) **I. L. R. 39 All. 355**

Sch. I, Art. 118—*Adoption—Death of adopted son leaving a widow—Adopting mother making a second adoption during widow's lifetime—Adopted son in possession of the property to the knowledge of the plaintiff—Suit by reversioner of first adopted son to recover property challenging the second adoption brought after six years—Suit barred by limitation.* One *D* a holder of Vatan and non-Vatan property having died without leaving a son, *M* his senior widow adopted a son *A*. *A* died a minor in 1895 leaving a widow. In 1901, *M* adopted defendant No. 1 as son to *D* and from the date of his adoption defendant No. 1 remained in possession of the whole estate to the knowledge of the plaintiff. In 1904, *A*'s widow died. In 1912, the plaintiff claiming as the reversionary heir of *A* sued to recover possession of the property challenging the adoption of defendant No. 1. Defendant No. 1 pleaded limitation and adverse possession. *Held*, that there had been no adverse possession sufficient to bar the plaintiff's suit but it was barred under Art. 118 of the Limitation Act, 1908, as it was not brought within six years from plaintiff's knowledge of defendant No. 1's adoption. *Held*, also, that though the adoption of defendant No. 1 might be invalid by Hindu Law and *M*'s power of adoption might have been already exhausted, nevertheless the law of limitation would effectively defeat the plaintiff's claim. *Mohesh Narain Moonshi* v. *Taruck Nath Moitra, L. R. 20 I. A. 30*, followed, *Held*, further, that defendant No. 1's adoption to *D* who was not the last male holder affected the plaintiff, for the property in dispute was an ancestral estate and that *D* as well as *A* were ancestors of the plaintiff CHANBASAPPA *v.* KALIANDAPPA (1917) **I. L. R. 41 Bom. 728**

Sch. I, Arts. 120, 132—*Hypothecation decree—Movable property—Movable property converted into immovable property—Substituted security—Mortgagee purchasing part of the mortgaged pro-*

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 120, 132—*concld.*

perty—Merger. A hypothecation decree is movable property and a mortgage thereof is one of movable property which is governed by Art. 120, Sch. I to the Indian Limitation Act. But where movable property has become converted into immovable property, the mortgagee becomes entitled to the substituted security and also to the larger period of limitation prescribed by Art. 132 of the first Schedule to the said Act. It does not necessarily follow that because a person in the position of a mortgagee purchases a portion of the mortgaged property the mortgage thereby becomes *pro tanto* extinguished. Everything depends upon the terms of the sale, and unless it is stipulated that the mortgage is to be extinguished or unless there are circumstances from which an intention to extinguish the mortgage in whole or part may be inferred, it cannot be held that the mortgage merges in the purchase. *Gous Mahomed* v. *Khawas Ali Khan, I. L. R. 23 Calc. 56, Jiwan Ali Beg* v. *Sasa Mal, I. L. R. 9 All. 108*, referred to. JAMNA DEI *v.* LALA RAM (1916).

I. L. R. 39 All. 74

Sch. I, Arts. 121, 142—

See SALE FOR ARREARS OF REVENUE.

I. L. R. 44 Calc. 412

Sch. I, Art. 123—

See BURMESE LAW.

I. L. R. 44 Calc. 379

Sch. I, Art. 127—

See CUTCHI MEMONS.

I. L. R. 41 Bom. 181

Applicability of the Article to Mahomedan—Suit to recover share in joint family property. The following question was referred to a Full Bench :—"Whether Art. 127 of the Second Schedule of Act XV of 1877 can apply to the property of a Mahomedan (or any other person not being a Hindu), and not having been proved to have adopted as a custom the Hindu law of the joint family." *Held* (SHAH, *J.* dissenting), that it did not. ISAP AHMED *v.* ABHRAMJI AHMADJI (1917).

I. L. R. 41 Bom. 588

Sch. I, Art. 131—

See INAMDAR . **I. L. R. 41 Bom. 159**

Sch. I, Art. 134—

See HINDU LAW—ENDOWMENT.

I. L. R. 40 Mad. 745

Transfer with possession by mortgagee—Transferee taking possession of some items later than date of transfer, effect of—Transferee not taking possession at all of some other items, effect of—Limitation, from what date, date of transfer or date of possession—"Transfer" in Art. 134, meaning of—Question referrable to a Full Bench, when—High Court, Appellate Side Rules, r. 2. Held by the Full Bench (WALLIS, *C. J.*, and COUTTS TROTTER, *J.*, *contra*) that Art. 134 of the Limitation Act does not apply to a transfer from a trustee or mortgagee under which possession is not taken by the transferee. *Per* WALLIS, *C. J.*, and COUTTS TROTTER, *J.*—Art. 134 of the Limitation Act applies to a transfer from a trustee or mortgagee under which possession is not taken by the transferee. Where

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Art. 134—*concld.*

possession is taken under the transfer not on the date of the transfer but some time later, *Held*, (*a*) *Per* WALLIS, *C. J.*, and COUTTS TROTTER, *J.*—Art. 134 of the Limitation Act applies and time begins to run from the date of transfer and not from the date of taking possession; (*b*) *Per* ABDUR RAHIM and SESHAGIRI AYYAR, *JJ.*—Art. 134 of the Limitation Act applies, but time begins to run not from the date of transfer but from the date of taking possession; and (*c*) *Per* SRINIVASA AYYANGAR, *J.*—Art. 134 of the Limitation Act is not applicable to the case. It applies only in cases where the transferee takes possession on the date of transfer and where the mortgagor is entitled even on the date of transfer to sue the transferee for possession. *Per* SRINIVASA AYYANGAR, *J.—Obiter:* "Transfer" in Art. 134 means "transfer of title" and not "transfer of possession." *Held* by the Full Bench :—Under r. 2 of the Rules of the High Court, Appellate Side, only a question of law involved in the determination of the case may be referred to a Full Bench; and that the third question referred to them did not so arise in the case. SEETI KUTTI *v.* KUNHI PATHUMMA (1917).

I. L. R. 40 Mad. 1040

Sch. I, Arts. 138, 144—*Limitation—Suit for joint possession—Purchase of undivided share—Effect of an order for formal possession against the judgment-debtor.* On the 20th of March, 1900, plaintiff purchased at an auction sale in execution of a decree an undivided one-third share in certain *maufi* land. On the 20th of September, 1900, plaintiff obtained, under s. 319 of the Code of Civil Procedure, 1882, formal possession of the property purchased. On the 18th of September, 1912, plaintiff filed a suit for recovery of joint possession of the share. *Held*, that the suit was within time. *Mangl Prasad* v. *Devi Din, I. L. R. 19 All. 499, Jagan Nath* v. *Milap Chand, I. L. R. 28 All. 722, Narain Das* v. *Lalta Persad, I. L. R. 21 All. 269*, and *Rahim Bakhsh* v. *Muhammad Hafiz, 10 Indian Cases, 319*, referred to. RAJENDRA KISHORE SINGH *v.* BHAGWAN SINGH (1917).

I. L. R. 39 All. 460

Sch. I, Arts. 142, 144—

See CONSTRUCTION OF DOCUMENT.

I. L. R. 41 Bom. 5

Sch. I, Art. 144—

See ADVERSE POSSESSION.

I. L. R. 44 Calc. 425

Sch. I, Art. 181—

See CIVIL PROCEDURE CODE (1908) O. XXI, R. 2; O. XXXIV, RR. 4, 5.

I. L. R. 39 All. 532

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 5.

I. L. R. 39 All. 641

Filing affidavit to prove service of notice under O. XXI, r. 22 of the Civil Procedure Code (Act V of 1908), step in aid of execution. Filing an affidavit to prove service on judgment-debtor of notice issued under O. XXI, r. 22 of the Civil Procedure Code was equivalent, in this case, to applying to the Court to take a

LIMITATION ACT (IX OF 1908)—*contd.*

——— **Sch. I, Art. 181**—*concld.*

step in aid of execution. PRANKRISHNA DAS *v.* PRATAP CHANDRA DALOI (1917).

21 C. W. N. 423

——— **Sch. I, Art. 182, cl. (5)**—

See EXECUTION **I. L. R. 40 Mad. 1069**

1. ——— *Step in aid of execution, what is—Decree-holder's application for summoning witnesses in opposition to objections taken by the judgment-debtor, if such a step.* After delivery of possession of certain property to the decree-holder, the judgment-debtor put in objections to the said delivery of possession, and the Court found it necessary to determine the standard of measurement, and, for that purpose, to take evidence in the matter. The decree-holder, on 11th February 1911, applied for summonses upon his witnesses, and witnesses were examined. The Court after taking evidence on both sides, directed fresh delivery of possession and ordered the decree-holder to deposit costs, which not having been paid, the execution case was dismissed on the 29th April 1911 for default. The decree-holder next put in the present application for execution on the 17th January 1914: *Held,* that as the determination of the standard of measurement became necessary by reason of the judgment-debtor's objection, the decree-holder's application to the Court for summoning witnesses was an act in furtherance of the application for execution which was still pending and was therefore a step in aid of execution. And the present application for execution having been made within three years of the date on which such a step was taken, was not barred. KEDER NATH DE ROY *v.* LAKHI KANTA DE (1917).

21 C. W. N. 868

2. ——— *Application for execution—Omission to file encumbrance certificate and draft sale-proclamation—Return for amendment—No representation—Application, whether, in accordance with law.* An application for execution presented in December, 1912 was ordered to be returned for amendment, the order requiring the applicant to file (*a*) encumbrance certificates and (*b*) draft proclamation of sale. It was never taken back by the applicant or amended. A fresh application was presented in January, 1915. On the objection that the application of December, 1912 was not in accordance with law and that the application of January, 1915 was therefore barred by limitation: *Held,* that the application of December, 1912 having complied with every statutory requirement, was one in accordance with law within Art. 182 (*5*) of the Limitation Act and that the application of January, 1915 was therefore in time, the failure to represent the earlier application being of no consequence; as neither the failure to file an encumbrance certificate as required by r. 148 of the Rules of Practice nor the failure to file a draft proclamation of sale (which is not required by O. XXI, r. 66, Civil Procedure Code, to be annexed to the application) were such defects as would render an application otherwise legal, illegal. NATESA *v.* GANAPATHIA (1916).

I. L. R. 40 Mad. 949

——— **Sch. I, Art. 182 (7)**—*Execution of decree—Decree payable by instalments—Whole decree executable on failure to pay any one instalment—Limitation.* When a decree payable by instalments provides that the decree-holder shall have "discretion" or "power" on default being made in payment of any one instalment to realize the full amount of the decree with interest without waiting for any future instalment to become due: *Held,* that this does not mean that the decree-holder is bound to execute the decree for the whole amount remaining due when default is made, but he may still continue to execute the decree by instalments as they become due. *Gaya Din* v. *Jhumman Lal, I. L. R. 37 All. 400,* and *Chatar Singh* v. *Amir Singh, I. L. R. 38 All. 204,* distinguished. *Shankar Prasad* v. *Jalpa Prasad, I. L. R. 16 All. 371,* referred to. LACHMI NARAIN *v.* SARJU PRASAD (1916) . **I. L. R. 39 All. 230**

LIMITATION ACT (IX OF 1908)—*concld.*

——— **Sch. I, Art. 182(7)**—*concld.*

——— **Sch. I, Art. 183**—*Decree of Original Side of High Court against two persons jointly—Revivor of decree on notice to one only under s. 248 of Civil Procedure Code (XIV of 1882), whether a revivor against the other also.* On the Original Side of the High Court an order of revivor under s. 248, Civil Procedure Code (XIV of 1882), of a decree against two persons jointly when made on an application for execution against only one of them does not keep the decree alive as against the other, so as to enable the decree-holder to execute it against that other judgment-debtor, more than twelve years from the date of the decree. Art. 183 of the Limitation Act (IX of 1908) which is applicable to execution of decree passed on the Original Side of the High Court differs in this respect from Art. 182. KRISHNAIYAH *v.* GAJENDRA NAIDU (1917).

I. L. R. 40 Mad. 1127

LIQUIDATOR.

——— **appointment of—**

See COMPANIES ACT (VII OF 1913), SS. 207 (ii), 208. **I. L. R. 39 All. 412**

LIS PENDENS.

——— *Mortgage suit, settlement of land by mortgagor with tenants pending suit and before suit—Tenants if acquire raiyati title—Mortgagor's power to grant leases binding on mortgagee.* Where, pending a mortgage suit, the mortgagor settled a number of persons on different portions of the land and the latter got their names entered in the record-of-rights as tenants in occupation: *Held,* in a suit by the plaintiff in the mortgage suit, who had purchased the mortgaged property in execution of his own decree, to recover possession from the tenants, that the plaintiff should recover. The principle of *Benad Lal Pakrashi* v. *Kalu Pramanick, I. L. R. 20 Calc. 708,* should not be extended so as to affect the application of the doctrine of *lis pendens.* But tenants who were settled on the land by the mortgagor before the mortgage suit but after the mortgage, could keep their lands against the plaintiff upon proof (the burden whereof would be upon them) that the leases in their favour were granted on the usual terms in the ordinary course of management. The mortgagor has not anything like a general authority to deal with or affect the mortgaged property during his possession thereof. The true position is that he may make a lease conformable to usage in the ordinary course of management. MADAN MOHAN SINGH *v.* RAJ KISHORI KUMARI (1912).

21 C. W. N. 88

LITIGATION.

——— protraction of—

See GRANT . **I. L. R. 44 Calc. 585**

LOCAL INVESTIGATION.

——— *Proper mode of conducting local investigations—Practice.* Great care ought to be taken by a Magistrate who holds a local investigation to see that he is not approached by an outsider and that he does not allow his mind to be affected by outside matters. The proper thing for him to do is to be attended by a representative of either side for the purpose of identifying the points which are material in the case on the one side or the other; and he ought not to allow himself to enter into general conversation with the people of the neighbourhood about the case. CHANDRA KUMAR GHOSE *v.* MAHENDRA KUMAR GHOSE (1916). **I. L. R. 44 Calc. 711**

LOSS OF GOODS.

See RAILWAYS ACT (IX OF 1890), S. 72 **21 C. W. N. 1125**

——— *Notice—"Railway administration"—Railways Act (IX of 1890), ss. 3(6) 77, 140—Scope of s. 140—Notice to Government through Collector—Limitation Act (IX of 1908), Sch. I, Arts. 30, 31, 115—Contract—Breach of contract, for non-delivery.* S. 140 of the Railway Act has not the effect of cutting down the connotation of the words "railway administration" as contained in s. 3 (6). It only provides for the convenience of the party aggrieved that if he wants to serve the notice on the Manager of the State Railway or the Agent of the Railway Company he must do so in one of the ways mentioned there. If the party chooses to give notice to the Government or the Native States or the Railway Company there is nothing in the Act to prevent his doing so; the latter alternative may enhance his trouble but it cannot take away his rights. *Secretary of State for India* v. *Dip Chand Poddar, I. L. R. 24 Calc. 306, Great Indian Peninsula Railway Co.* v. *Chandra Bai, I. L. R. 28 All. 552, Janaki Das* v. *Bengal Nagpur Railway Co., 16 C. W. N. 356, Periannan Chetti* v. *South Indian Railway, I. L. R. 22 Mad. 137, Nadiar Chand Shaha* v. *Wood, I. L. R. 35 Calc. 194,* referred to. *Per* CHATTERJEE, *J.* Notice served upon the Government through the Collector within six months is sufficient to satisfy the requirements of s. 77 of the Act. Art. 30 of the 1st Schedule to the Limitation Act does not apply where the plaintiff's case is not for the loss of the goods, and where the defendant does not plead or prove any loss. *Per* CHATTERJEE, *J.* Art. 31 applies to suits against a carrier for compensation for non-delivery of or delay in delivering goods, and the time for suit is one year from the time when the goods ought to be delivered. This Article contemplates a suit by the consignee and further it casts upon the carrier the onus of proving when the goods should have been delivered. *Per* CHATTERJEE, *J.* When there is breach of a written contract Art. 115 of the Schedule governs the case. *Mohan Sing Chawan* v. *Henry Conder, I. L. R. 7 Bom. 478, Danmull* v. *British India Steam Navigation Co., I. L. R. 12 Calc. 477,* referred to. RADHA SHYAM BASAK *v.* SECRETARY OF STATE FOR INDIA (1916) **I. L. R. 44 Calc. 16**

LUNACY ACT (XXXV OF 1858).

See HINDU LAW—ADOPTION. **I. L. R. 40 Mad. 660**

LUNACY ACT (IV OF 1912).

——— s. 72—*Lunatic—Appointment of guardian to person of lunatic—Wife of lunatic not necessarily excluded by s. 72.* S. 72 of the Lunacy Act is a kind of warning that particular care should be exercised by the court where a person is entitled to inherit part of the property of a lunatic, and is therefore benefited by his death, to see that the appointment of such person as guardian of the person of the lunatic is a beneficial one. The section, however, does not absolutely preclude such an appointment and in some cases the appointment of, for instance, the wife of the lunatic may be the most suitable, notwithstanding that she is one of the heirs *Fazal Rab* v. *Khatun Bibi, I. L. R. 15 All. 29,* distinguished. AMIR KAZIM *v.* MUSI IMRAN (1916) . . . **I. L. R. 39 All. 158**

LUNATIC.

See DECREE . **I. L. R. 44 Calc. 627**

See LUNACY ACT (IV OF 1912), S. 72 **I. L. R. 39 All. 158**

——— adoption by—

See LUNACY ACT (XXXV OF 28). **I. L. R. 40 Mad. 660**

LURKING HOUSE-TRESPASS.

——— *Theft—Penal Code (Act XLV of 1860), ss. 456, 457, 380—Trial for house-trespass and theft under ss. 457, 380, Penal Code—Disbelief of story of theft—Finding of intention to make immoral proposals—Conviction under s. 456, legality of—Prejudice—Criminal Procedure Code (Act V of 1898), s. 238—Necessity of charging intention in cases under s. 456—Intention how determined—Rule of construction of decided cases.* On a trial for offences under ss. 457 and 380 of the Penal Code, although the alleged intention, *viz.*, to commit theft has failed, the Court can, under s. 238 of the Criminal Procedure Code, convict the accused of a minor offence, under s. 456 of the Penal Code, if he has not been prejudiced thereby. Where on an allegation that the accused entered the room of a widow at night and committed theft, he was tried summarily for offences under ss. 457 and 380, and set up the defence of previous intrigue and entry with such intent at her invitation, but the Court disbelieved the stories of theft and intrigue and found the entry to have been without her consent and in order to make immoral proposals to her to her annoyance: *Held,* that that the conviction under s. 456 of the Penal Code was legal and that the accused had not been prejudiced in the circumstances. *Jharu Sheikh* v. *King-Emperor, 16 C. W. N. 696,* distinguished. *Koilash Chandra Chakrabarty* v. *Queen-Empress, I. L. R. 16 Calc. 657, Balmakand Ram* v. *Ghansamram, I. L. R. 22 Calc. 391, Premanundo Shaha* v. *Brindabun Chung, I. L. R. 22 Calc. 994, Emperor* v. *Ishri, I. L. R. 29 All. 46, Sher Singh* v. *Empress (1883), Punj. Rec. 14, Lalji Ram* v. *Queen-Empress, (1893) Punj. Rec. 12, Ramrang* v. *King-Emperor (1902), Punj. Rec. 18, Queen-Empress* v. *Balu, (1886) Ratan unrep. Cr. C. 293,* approved. In determining the question of prejudice, the nature

LURKING HOUSE-TRESSPASS—*concld.*

of the case made at the trial, the evidence given and the line of defence of the accused are matters to be taken into consideration. *Reg.* v. *Govindas Haridas, 6 Bom. H. C. 96*, referred to. To sustain a conviction under s. 456 of the Penal Code, it is not necessary to specify the criminal intention in the charge. It is sufficient if a guilty intention contemplated by s. 441 is proved. The intention may be determined from direct evidence or from the conduct of the accused and the attendant circumstances of the case. *Balmakand Ram* v, *Ghansamram, I. L. R. 22 Calc. 391, Rex* v. *Dixon 3 M. & S. 11*, referred to. Every judgment must be read as applicable to the particular facts proved or assumed to be proved. *Quinn* v. *Leathem, [1901] A. C. 495*, followed. KARALI PRASAD GURU *v.* EMPEROR (1916) . **I. L. R. 44 Calc. 358**

M

MACHINERY.

———— hire of—

See HIRE-PURCHASE AGREEMENT.

I. L. R. 44 Calc. 72

MADRAS ACT.

———— **1865—VII.**

See MADRAS IRRIGATION CESS ACT.

———— **1873—III.**

See MADRAS CIVIL COURTS ACT.

———— **1884—IV.**

See DISTRICT MUNICIPALITIES ACT, MADRAS.

———— **1889—III.**

See TOWNS NUISANCE ACT, MADRAS.

———— **1900—I.**

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT.

———— **1900—V.**

See IRRIGATION CESS AMENDMENT ACT.

———— **1902—I.**

See MADRAS COURT OF WARDS ACT.

———— **1904—III.**

See MADRAS CITY MUNICIPAL ACT.

———— **1905—III.**

See LAND ENCROACHMENT ACT, MADRAS.

———— **1908—I.**

See ESTATES LAND ACT, MADRAS.

———— **1914—I.**

See HINDU TRANSFERS AND BEQUESTS ACT, MADRAS.

MADRAS CITY MUNICIPAL ACT (III OF 1904).

———— **s. 150**—"*Kept*," *meaning of—Vehicle under repair is one kept and taxable.* Even a vehicle that is under repair and therefore unfit for immediate use, is a vehicle "kept" within the meaning of s. 150 (*1*) of the Madras City Municipal Act (III of 1904) and so becomes liable to be taxed under that section. The word "kept" is not qualified by the words "for hire." It is not necessary that the owner should have possession of the vehicle in order to make it taxable. KRISHNA RÓW *v.* MADRAS MUNICIPAL CORPORATION (1916)

I. L. R. 40 Mad. 545

MADRAS CITY MUNICIPAL ACT (III OF 1904)—*concld.*

———— **s. 150**—*concld.*

MADRAS IRRIGATION CESS.

———— *Water Rights—Artificial Channel—Right of Zamindar—Permanent Settlement—"Engagements with Government"—Madras Irrigation-Cess Acts VII of 1865 and V of 1900.* By the Madras Irrigation Cess Act (VII of 1865), as amended by Madras Act V of 1900, s. 1, whenever water is supplied or used for purposes of irrigation from any river, stream, channel, tank, or work belonging to, or constructed by, Government, a separate cess for such water may be levied on the land so irrigated, provided (*inter alia*) "that where a zamindar or inamdar ..... is, by virtue of engagements with the Government entitled to irrigation free of separate charge, no cess under this Act shall be imposed for water supplied to the extent of this right and no more." At the permanent settlement the Government settled in four zamindars lands contiguous to a river, together with four artificial irrigation channels and sluices connecting them with the river. The sanads did not refer to the channels or sluices. The appellants were the present holders of one of the four zamindaris, the sluices of one only of the channels being upon their lands. The other three zamindaris had been purchased by the Government. The appellants used for irrigation water derived from the river through all four channels. The Government claimed to be entitled to levy cess under the above Act upon the appellants' lands for the irrigation so far as it included crops not customary at the time of the permanent settlement. *Held*, assuming, but not deciding, that the river belonged to the Government, (*i*) that the settlement was an engagement with the Government within the meaning of the proviso; (*ii*) that under the sanads the zamindar in whose estate the sluices of each of the channels were situated acquired the right to take from the river for irrigation an amount of water limited by the then size of the channels and nature of the sluices, but not limited by the irrigation then customary; (*iii*) that after the water had passed into the channels the Government had no rights in respect of it save as owners of the three zamindaris; (*iv*) that the rights of the owners *inter se* in the water flowing in the channels were analogous to those of the riparian owners in a natural stream; (*v*) that, there being no evidence that more water was being taken from the river than was justified by the sanads, the appellants were not liable to pay Cess. The law of the Madras Presidency as to rivers and streams differs in some respects from English law, and it is quite possible that the former law recognises some proprietary right of the Government in water flowing in them. KANDUKURI BALASURYA ROW *v.* SECRETARY OF STATE FOR INDIA (1917)

L. R. 44 I. A. 166
21 C. W. N. 1089

MADRAS IRRIGATION CESS ACT.

See IRRIGATION CESS ACT, MADRAS (VII OF 1865).

MADRAS IRRIGATION CESS ACT (VII OF 1865).

See MADRAS IRRIGATION CESS.
L. R. 44 I. A. 166

MADRAS UNIVERSITY.

See SPECIFIC RELIEF ACT (I OF 1877), S. 45 . . **I. L. R. 40 Mad. 125**

MADRAS UNIVERSITY REGULATIONS.

——— **Regulation 64—**

See SPECIFIC RELIEF ACT (I OF 1877), S. 45 . . **I. L. R. 40 Mad. 125**

MAGISTRATE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 188.
I. L. R. 41 Bom. 667

MAHA BRAHMINS.

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 6, 58 . **I. L. R. 39 All. 196**

MAHOMEDAN LAW.

	COL.
ALIENATION	197
DIVORCE	197
GIFT	197
MARRIAGE	198
PRE-EMPTION	198
WAKF	200
WILL	201

See CUSTOM . **I. L. R. 39 All. 574**
See PRE-EMPTION . **I. L. R. 39 All. 133**
I. L. R. 44 Calc. 675

MAHOMEDAN LAW—ALIENATION.

——— *Private sale by one of several heirs of a deceased Mahomedan, in possession of the estate, for discharging a debt binding on the estate, not binding on co-heirs or other creditors of the deceased.* When one of the co-heirs of a deceased Mahomedan, in possession of the whole or part of the estate of the deceased, sells property in his possession forming part of the estate for discharging the debts of the deceased, such sale is not binding on the other co-heirs or creditors of the deceased. *Pathummabi* v. *Vittil Ummachabi. I. L. R. 26 Mad. 734,* overruled. *Hasan Ali* v. *Mehdi Husain, I. L.R. 1 All. 533,* dissented from. *Quœre:* Whether a decree against one of the heirs of a deceased Mahomedan binds the others. ABDUL MAJEETH *v.* KRISHNAMACHARIAR (1916).
I. L. R. 40 Mad. 243

MAHOMEDAN LAW—DIVORCE.

——— *Divorce—Revocation—Validity of the bedai form of divorce. Held,* that it is not every kind of divorce which is revocable according to the Mahomedan Law, but only those made in certain forms. The *bedai* form of divorce is a perfectly legal form and is irrevocable. *In re Abdul Ali Ismailji, I. L. R. 7 Bom. 180,* followed. AMIR-UD-DIN *v.* KHATUN BIBI (1917) . . . **I. L. R. 39 All. 371**

MAHOMEDAN LAW—GIFT.

——— *Deed of gift—Gift with a condition attached—Obligation in the nature of trust—Construction of document.* A Mahomedan woman made a deed of gift in favour of three persons, Mirza Vazir Beg, Imatiyaj Begum and Chaggan Bibi in the following terms: "The lands have been given to you three as gifts. All my rights of ownership are transferred to you. The vahiwat or management of the lands should be made by one of you three, namely, Vazir Beg, and after paying Government dues, Rs. 40 should be paid out of the residue of the income annually to the Imatiyaj Begum, and the remainder should be divided equally between Mirza Vazir Beg and Chaggan Bibi. Mirza Vazir Beg should have vahiwat and give income according to their shares to the two. They have no right of claiming division of the lands from Mirza Beg, but only a right of claiming income every year." A suit was brought by Imatiyaj Begum to enforce her right under the deed of gift. The second defendant, transferee of Mirza Beg's interest in the property, contended that the deed of gift in so far as it conferred benefits on the two women mentioned therein was void and that he was absolutely entitled. *Held,* that the gift was good and complete under the Mahomedan law and the deed could be supported in favour of the plaintiff. TAVAKALBHAI *v.* IMATIYAJ BEGUM (1916)
I. L. R. 41 Bom. 372

MAHOMEDAN LAW—MARRIAGE.

1. ——— *Marriage with a wife's sister during the continuance of first marriage—Whether invalid or wholly void—Legitimacy of the issue of such marriage.* Under the Mahomedan Law the marriage with a wife's sister during the subsistence of the first marriage is only *fasid* (invalid) and not *batil* (void). The issue of such marriage is legitimate and can inherit. *Aizunnissa Khatoon* v. *Karimunnissa Khatoon, I. L. R. 23 Calc. 130,* dissented from. TAJBI *v.* MOWLA KHAN (1917) . . . **I. L. R. 41 Bom. 485**

2. ——— *Marriage of girl of—below the age of 15 after death of her parents—Uncle or grandmother, if entitled to consent—Proof that she had attained puberty and consented to marriage, in the absence of guardian's consent, essential—Burden of proof—Legal evidence—Hearsay evidence, objection to admission of—Hearsay statements recorded by Commissioner, if should be allowed to be read in Court.* According to Mahomedan law, a girl becomes a major on the happening of either of two events, *first,* the completion of her fifteenth year, and, *second,* on her attainment of a state of puberty at an earlier period. The burden of proving that a girl has in either of these ways reached her majority rests upon those who allege it and rely upon it. And this must be done by legal evidence. The evil consequence of the admission of hearsay evidence is not merely that it prolongs litigation, and increases its cost, but that it may unconsciously be regarded by judicial minds as corroboration of some piece of evidence legally admissible and thereby obtain for the latter quite undue weight and significance. The reading of undoubtedly hearsay evidence recorded by a Commissioner who is not empowered to rule out evidence on the ground of inadmissibility disapproved. ATKIA BEGUM *v.* IBRAHIM RASHID (1916) . . . . **21 C. W. N. 345**

MAHOMEDAN LAW—PRE-EMPTION.

See PRE-EMPTION . **I. L. R. 39 All. 133**

MAHOMEDAN LAW—PRE-EMPTION—*contd.*

1. ——————— *Exercise of right, when enforceable—Question of law, at what stage of case can be raised—Decree, nature of—When Court should take notice of events happening after institution of suit.* A person who seeks the assistance of a Court with a view to enforce a right of pre-emption is bound to establish that the right existed at the date of the sale, at the date of the institution of the suit, and also at the date of the decree of the primary Court. *Ram Gopal* v. *Piari Lal, I. L. R. 21 All. 441,* and *Tafazzul Husain* v. *Than Singh, I. L. R. 32 All. 567,* followed. When a question of law is raised for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea. *Connecticut Fire Insurance Co.* v. *Kavanagh,* [*1892*] *A. C. 473,* followed. Ordinarily the decree in a suit should accord with the rights of the parties as they stand at the date of its institution. But where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate or that it is necessary to have the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties, it is incumbent upon a Court of justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made. *Rai Charan Mandal* v. *Biswa Nath Mandal, 20 C. L. J. 107,* referred to. NURI MIAN *v.* AMBICA SINGH (1916)

I. L. R. 44 Calc. 47

2. ——————— *Pre-emption—Property situate in Kolaba District—A co-sharer selling his share to a Hindu purchaser—Applicability of the law of pre-emption by agreement of parties—Observance of the formalities of Talab-i-Mowasibat and Talab--Ishhad before the completion of sale, whether premature—Right of an administrator to continue the suit on the death of the pre-emptor pendente lite—Probate and Administration Act (V of 1881), s. 89.* S, a Mahomedan owner of an undivided one-fourth share in certain Inam villages in Kolaba District, entered into an agreement with the defendants on the 14th October 1908 for the sale of his share for Rs. 30,000, the terms of the agreement being that if the owner of the three-fourths share (*i.e.*, the plaintiff) was willing to purchase S's share and if S agreed to the purchase he should immediately return the amount received from the defendants. On the same day a notice was accordingly served on the plaintiff by S asking him if he was anxious to pre-empt the quarter share. On receipt of this notice, the plaintiff on the 15th October performed the *Talab-i-Mowasibat.* On the 17th October, the plaintiff through his attorneys wrote a letter to S declaring his intention to exercise the right of pre-emption and at the same time performed *Talab-i-Ishhad.* The copies of S's notice and plaintiff's solicitor's reply of the 17th October were duly forwarded to the defendants and whilst the correspondence between S and the plaintiff was going on the former received the full amount of the purchase money from the defendants and executed a sale deed in their favour. The plaintiff thereupon sued to recover the share by right of pre-emption. The defendants contended *inter alia* that the right of pre-emption could not be exercised against them as they were

MAHOMEDAN LAW—PRE-EMPTION—*concld.*

Hindus; that the property over which it was claimed was not a small one; that the law of pre-emption was not made applicable to Kolaba District; that the *talabs* performed before the completion of the sale were premature. On these facts, *Held,* (*i*) that the defendants were bound to comply with the plaintiff's demand for a transfer of the quarter share in the villages to him, since it was clear from the contract and the subsequent correspondence that the defendants agreed with the vendor that the law of pre-emption applying between the vendor and his co-sharer should be applicable to the defendant's purchase; (*ii*) that the action of the plaintiff in performing the *talabs* was not premature as the intention of the parties as to the date when the bargain was to be considered as concluded was the date of the contract itself; (*iii*) that there was no limit to the size of the property of which pre-emption might be claimed by a co-sharer, though there was a limit in the case of those who based their claim on vicinage. A question being raised as to whether on the death of a pre-emptor *pendente-lite,* a suit can be proceeded with by his administrator under s. 89 of the Probate and Administration Act, 1881. *Held,* that the suit could be proceeded with by the administrator as the relief sought, namely, conveyance of a share, could be enjoyed by a personal representative after the death of the pre-emptor inasmuch as it added the property in suit to the estate of the deceased. SITARAM BHAURAO *v.* SAYAD SIRAJUL (1917) . **I. L. R. 41 Bom. 636**

MAHOMEDAN LAW—WAKF.

1. ——————— *Wakf—Deed providing for charitable purposes, and also for support of grantors' family and descendants—Test whether deed is valid as a wakf or whether wakf is illusory—Property substantially given to charities, the surplus to support family—Mussalmans Wakf Validating Act (VI of 1913).* The test of whether a deed was, or was not, valid as a wakf in the cases decided before Act VI of 1913, was that if the effect of the deed was to give the property substantially to charitable uses it would be valid; but if the effect of it was to give the property in substance to the settlors' family it would be invalid under Mahomedan Law. *Mahomed Ashanulla Chowdhry* v. *Amarchand Kundu, I. L. R. 17 Calc. 498; L. R. 17 I. A. 28, Abdul Fata Mahomed Ishak* v. *Rasmaya Dhur Chowdhri, I. L. R. 22 Calc. 619; L. R. 22 I. A. 76,* and *Majubunissa* v. *Abdul Rahim, I. L. R. 23 All. 233, 212; L. R. 28 I. A. 15, 23,* referred to. To determine whether any particular case answers the test, all the circumstances existing at the date of the deed must be taken into consideration, such as the financial position of the grantor, the amount of the property, the nature and the needs of the charity, their probable or possible expansion, the priority of their claim upon the settled fund and such like. It does not follow, because the share of the income going to the family, which may be a dwindling sum, is for a time larger than that going to the charities, that the effect of the deed is to give the property in substance to the family, and that it is therefore invalid as a wakf. In the present case the sum devoted to the charities was not large though for the present it was abundant for their needs; but having regard to all the circumstances of the case, the dominating purpose and intention of the grantors in executing the deed was to provide

MAHOMEDAN LAW—WAKF—*concld.*

adequately for those charities. That was their main and paramount object. The secondary and subsidiary object was to secure for their family and descendants any surplus that might remain after the needs of the charities had been satisfied. As the gift for the charities was perpetual it was necessary and right that the provision for capturing any possible residue should also be perpetual. The provisions of the deed carry out these objects, and in their Lordships' opinion the effect of the instrument is not to give the trust property in substance to the family of the grantors but to give it substantially to the charitable purposes named in it. The deed therefore was within the authorities a good and valid deed of wakf. RAMANANDAN CHETTIAR *v.* VAVA LEVVAI MARAKAYAR (1916) **I. L. R. 40 Mad. 116 L. R. 44 I. A. 21**

2. ——— *Waqf—Minor mutawalli—Jurisdiction of Court to appoint guardian in respect of waqf property—Guardians and Wards Act (VIII of 1890).* A Mahomedan died, leaving two sons and a daughter, all minors, and having also constituted a waqf of a partly public and partly private character, under which, upon the death of the waqif one or other of his sons was to be *mutawalli*. *Held*, that it was competent to the District Judge to appoint a person to perform the duties of the *mutawalli* pending either the coming of age of the minors or the institution of a regular suit by some persons interested in the endowment to contest the arrangement made by him. EJAZ AHMAD *v.* KHATUN BEGAM (1916) . . . . **I. L. R. 39 All. 288**

MAHOMEDAN LAW—WILL.

——— *Will—Bhagdari property—Will in favour of widow and daughter—Suit by a residuary heir of the testator for a declaration that the will was invalid—Bhagdari custom—Testamentary capacity of the owner—Rule of Mahomedan Law to be applied—Validity of the will.* A Mahomedan Bhagdar made a will by which he purported to dispose of his entire property including Bhagdari property in favour of his widow and daughter. The plaintiff who was the residuary heir of the testator never consented to this form of the will. He, therefore, sued for a declaration that the will was invalid under Mahomedan Law so far as the *Bhag* property was concerned and that he was entitled to succeed to it after the death of the widow under the Bhagdari custom. The question being raised as to what was the rule which regulated the testator's power to make the will. *Held*, that the rule of Mahomedan Law was the only law which could be applied and according to it the will was invalid. The plaintiff was, therefore, the presumptive reversioner under the Bhagdari custom. AHMAD ASMAL *v.* BAI BIBI (1916) . . . . **I. L. R. 41 Bom. 377**

MAHOMEDANS.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 127 . **I. L. R. 41 Bom. 588**

MAINTENANCE.

See HINDU LAW—MAINTENANCE. **I. L. R. 39 All. 234**

——— **future, including allowances, right to—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 60 (*l*) **I. L. R. 40 Mad. 302**

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MAD. I OF 1900).

——— **s. 19—**

1. ——— *Claim, subsequent to Act—Contract before the Act, fixing rate of compensation, enforceability of.* Contracts entered into between a Malabar tenant and his landlord before the 1st January 1886, according to which compensation is payable at certain rates therein specified are valid and binding, whether the rates are more or less favourable to either party than the rates prescribed by the Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1900); and when the question of the rate of compensation comes up for determination at a date after the introduction of the Act, it is not open to either party to the contract to elect to have the rates fixed according to the Act in preference to the rates mentioned in the contract. *Kozhikot Sreemana Vikraman* v. *Modathil Ananta Patter*, *I. L. R. 34 Mad. 61*, *Paru Amma* v. *Kunhikandan*, *I. L. R. 36 Mad. 410*, and *Kochu Rabia* v. *Abdurahman*, *I. L. R. 38 Mad. 589*, overruled. RAYARAPPA ATIOTI *v.* KELAPPA KURUP (1916) **I. L. R. 40 Mad. 594**

2. ——— *Lease—Stipulation for payment of fee in respect of trees cut down.* A stipulation in a Malabar lease for the payment of *kuttikanam* (customary fee) to the landlord in respect of trees cut down is not necessarily contrary to the provisions of s. 19 of the Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1900). It is a question of fact to be determined in each case whether the cutting down of trees is an improvement or not, and whether the fee stipulated is reasonable or so unreasonable as to be prohibitive of the cutting down of trees at all. *Semble:* A customary fee of eight annas per tree is not unreasonable. *Vasudevan Nambudripad* v. *Valia Chathu Achan*, *I. L. R. 24 Mad. 47*, considered. RAJA OF COCHIN *v.* KITTUNNI NAIR (1916) **I. L. R. 40 Mad. 603**

MANU KYAY.

——— **Book X, rules 5, 14—**

See BURMESE LAW. **I. L. R. 44 Calc. 379**

MARK BY ILLITERATE EXECUTANT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 59 . **I. L. R. 41 Bom. 384**

MARKETABLE TITLE.

——— **proof of—**

See VENDOR AND PURCHASER. **I. L. R. 41 Bom. 300**

MARKSMAN.

——— **execution of a promissory note by—**

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), S. 27. **I. L. R. 40 Mad. 1171**

MARRIAGE.

See BREACH OF CONTRACT. **I. L. R. 41 Bom. 137**

See DAMAGES . **I. L. R. 41 Bom. 137**

See DIVORCE ACT (IV OF 1869), S. 14. **I. L. R. 41 Bom. 36**

MARRIAGE—*concld.*

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 41 Bom. 485

MEHR.

See CONSTRUCTION OF DOCUMENT.
I. L. R. 41 Bom. 5

MERGER.

See CIVIL PROCEDURE CODE (1908), S. 2.
I. L. R. 39 All. 393

See CIVIL PROCEDURE CODE, 1908 O. IX, R. 13 . . **I. L. R. 39 All. 13**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 120, 132 . **I. L. R. 39 All. 74**

MESNE PROFITS.

See HINDU LAW—ALIENATION.
I. L. R. 39 All. 61

MHARKI VATAN.

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874 AS AMENDED BY BOM. ACT III OF 1910), SS. 25, 36, 63 AND 64.
I. L. R. 41 Bom. 23

MINERALS.

——— rights of grantee to—

See GRANT . **I. L. R. 44 Calc. 585**

——— *Land Law in Bengal—Mokarari Lease—"With all rights."* A mokarari lease of lands "with all rights" ("*mai hakuk*") does not carry a right to the subjacent minerals. *Sashi Bhusan Misra* v. *Jyoti Singh, L. R. 44 I. A. 46,* followed and applied. GIRIDHARI SINGH *v.* MEGH LAL PANDEY (1917)
L. R. 44 I. A. 246

MINING LEASE.

——— *Construction—Rule of construction—Issue raised in the pleadings but neither at the hearing nor in appeal, not allowed to be raised before the Privy Council.* In construing the terms of a deed, the question is not what the parties may have intended but what is the meaning of the words which they used. Where a grantee of underground and coal-mining rights in a village which at the date of the grant had railway communication only by the East India Company, stipulated to pay royalty at a certain rate on all coals despatched by the said railway line, but in view of the contemplated construction of another line by the Bengal-Nagpur Railway Company, agreed that if by reason of such construction the freight of coal were reduced by two annas or more per ton, then "on all coals despatched in the aforesaid manner" royalties at a certain higher rate were to be paid: *Held,* that the words referred to all coal despatched by rail at the reduced rates either by the East India Company or the Bengal-Nagpur Railway Company. An issue raised in the pleadings but not at the hearing in the original Court or on appeal in the High Court was not allowed to be raised in the Privy Council. MANINDRA CHANDRA NANDI *v.* DURGA PRASAD SING (1917) **21 C. W. N. 707**

MINOR.

See ACCOUNT, SUIT FOR.
I. L. R. 44 Calc. 1

See CIVIL PROCEDURE CODE, 1908, S. 151, O. IX, R. 13 . **I. L. R. 39 All. 8**

See COMPROMISE . **I. L. R. 44 Calc. 829**

MINOR—*concld.*

See EVIDENCE ACT (I OF 1872), S. 115.
I. L. R. 41 Bom. 480

See MAHOMEDAN LAW—WAKF.
I. L. R. 39 All. 288

——— application by—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 144 **I. L. R. 41 Bom. 625**

——— *Mortgage in favour of minor who has advanced the whole of the mortgage money—Enforceability of, by him or by any other person on his behalf—Contract Act (IX of 1872), s. 11—Transfer of Property Act (IV of 1882), s. 7.* A mortgage executed in favour of a minor who has advanced the whole of the mortgage money is enforceable by him or by any other person on his behalf. *Mohori Bibee* v. *Dharmodas Ghose, I. L. R. 30 Calc. 539; 30 I. A. 114,* explained and distinguished. *Semble:* A sale to a minor under similar circumstances is equally good. *Navakotti Narayana Chetty* v. *Logalinga Chetty, I. L. R. 33 Mad. 312,* overruled. English and Indian Law reviewed. RAGHAVA CHARIAR *v.* SRINIVASA RAGHAVA CHARIAR (1916) . . . . **I. L. R. 40 Mad. 308**

MIRASIDARS.

——— general rights of, over house-sites and waste in villages—

See MIRASI VILLAGE
I. L. R. 40 Mad. 410

MIRASI VILLAGE.

——— *House-sites in—Ownership of—Legal presumption of ownership in Government and not in mirasidars—Prescription or user by mirasidars, effect of—General rights of mirasidars over house-sites and waste in villages.* The plaintiffs claiming to be mirasidars of a mirasi village in the Chingleput district sued to eject certain persons from a portion of the gramanattam (house-sites) which the defendants claimed to hold and enjoy under a patta granted to them by the Government. On the plea taken by the Government that the Government and not the mirasidars are the owners of house-sites in mirasi villages, the following question was referred to the Full Bench: "*Whether in a mirasi village the mirasidar is entitled to recover possession of a house-site held under a patta from Government?*" On a review of the history of mirasi tenure in the Presidency both before and after the establishment of the British Government and on a review of several revenue and judicial records relating to the question, *Held* by the Full Bench:—In the absence of proof to the contrary the presumption is that the Government and not the mirasidars are the owners of house-sites in mirasi villages. *Per* WALLIS, *C. J.*—But where there is evidence of user by the mirasidars the presumption of their ownership readily arises. *Per* AYLING, *J.*—The mirasidars may show that they are the owners by proving a previous grant by Government or prescription as against the Government. *Per* KUMARASWAMI SASTRIYAR, *J.*—(*i*) In mirasi villages the rights of Government over waste (including nattam and cheri) are subject to the rights of the mirasidars. (*ii*) The nature and extent of such rights are not uniform throughout the Presidency but vary, and the onus is on the mirasidars to prove that any specified incidents attached to mirasi rights in any particular district, there being no presumption that gramanattam is the exclusive property

MIRASI VILLAGE—*concld.*

of the mirasidars. (*iii*) The rights of mirasidars over waste are not extinguished by the mere fact that the Government grants pattas to strangers *Secretary of State for India* v. *Bai Rajbai, I. L. R. 39 Bom. 625, Sakkaji Rau* v. *Latchmana Gaundan, I. L. R. 2 Mad. 149, Sivanath Naicken* v. *Nattu Ranga Chari, I. L. R. 26 Mad. 371, Secretary of State for India* v. *M. Krishnayya, I. L. R. 28 Mad. 257, Natesa Gramani* v. *Venkatarama Reddi, I. L. R. 30 Mad. 510,* and *Bhaskarappa* v. *The Collector of North Kanara, I. L. R. 3 Bom. 452, 472,* referred to. SESHACHALA CHETTY *v.* CHINNASWAMI (1916)

I. L. R. 40 Mad. 410

MISAPPROPRIATED GOODS.

———— **suit for—**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 48 AND 49.

I. L. R. 40 Mad. 678

MISAPPROPRIATION—

———— **of client's property—**

See PROFESSIONAL MISCONDUCT.

I. L. R. 40 Mad. 69

MISDIRECTION.

See MISDIRECTION TO JURY.

See COUNTERFEIT COIN.

I. L. R. 44 Calc. 477

See CRIMINAL PROCEDURE CODE, SS. 367, 418, 423. **I. L. R. 39 All. 348**

MISDIRECTION TO JURY.

————*Misdirection to Jury—Prosecution, duty of, to produce material evidence—Circumstantial evidence—Presumption of innocence—Criminal Procedure Code (Act V of 1898), s. 342—Court's power to draw inferences from answers of accused—Evidence Act, s. 106.* The appellant and two other persons *R* and *A* were accused of having committed murder of a man travelling in a boat of which they were the boatmen. *R* was tried first and at this trial *A* was given a pardon and examined as a witness. The appellant was tried subsequently and the prosecution did not examine *A*. The jury by a majority returned a verdict of guilty against the appellant who was convicted by the Sessions Judge. In appeal the High Court set aside the conviction on the ground of misdirection to the jury: *Held* (as to the non-examination of *A*). *Per* TEUNON, *J.*—That the case of *Dhannoo Kazi, I. L. R. 8 Calc. 121,* is not an authority for the proposition that the prosecution is required to produce and examine such a witness but as he was examined as an approver at the former trial of *R*, it would have been more satisfactory if the prosecution had at least secured his attendance and failing in this had given detailed evidence of the efforts made in that direction. *Per* SHAMSUL HUDA, *J.*—That the omission to direct the attention of the jury to the question whether the prosecution was bound to call *A* as a witness and whether there was sufficient explanation why the prosecution did not call him was a defect in the charge which prejudiced the accused. That in the absence of anything to show that an effort was made to ascertain his whereabouts and to produce him in Court his absence from his village deposed to by one of the prosecution witnesses was not a sufficient explanation for his non-production: *Held* (as to the direction of the

MISDIRECTION TO JURY—*concld.*

Sessions Judge that the accused had said nothing about what had happened to the deceased and had given no explanation as to how he came by his death and this was a strong point against the accused). *Per* TEUNON, *J.*—That where a *primâ facie* case of circumstances making out or tending to support the charge against the accused is established and the accused withholds evidence in disproof or explanation available to him and not accessible to the prosecution, an inference unfavourable to the accused may legitimately be drawn. Under s. 342, Criminal Penal Code, it is open in the Court and jury to draw such inferences as they think just from the answers made by the accused to the necessary questions put to him by the Court. *Per* SHAMSUL HUDA, *J.*—That the accused is merely on the defensive and owes no duty except to himself, that he is at liberty as to the whole or any part of the case against him to rely on the witnesses for the prosecution or to call witnesses or to meet the charge in any other way he chooses and no inference unfavourable to him can properly be drawn because he takes one course rather than the other. Where in a criminal case there is a conflict between presumption of innocence and any other presumption, the presumption of innocence prevails. *Per* SHAMSUL HUDA, *J.* (TEUNON, *J.* dissenting). The strength of this presumption varies according to the seriousness of the charge upon which an accused person is put on his trial. The greater the crime the stronger is the proof required for conviction. *Per* SHAMSUL HUDA, *J.*—That whatever force a presumption arising under s. 106 of the Indian Evidence Act may have in civil or in less serious criminal cases in a trial for murder it is extremely weak in comparison with the dominant presumption of innocence: *Held* (as to the direction to the jury that they must not acquit the accused simply because in their opinion he may possibly not be guilty but that they should do so if they thought the prosecution evidence was for good reason not satisfactory). *Per* SHAMSUL HUDA, *J.*—That the case rested on circumstantial evidence and before the jury could find the prisoner guilty, they had to be satisfied not only that the circumstances were consistent with his having committed the act but that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person. That the prosecution evidence may be quite satisfactory and yet may leave ample room for doubt regarding the complicity of the accused in the crime and it was the duty of the Judge to have given the jury clear and unambiguous direction on these points. ASHRAF ALI *v.* KING-EMPEROR (1917).

21 C. W. N. 1152

MISJOINDER.

See MISJOINDER OF PARTIES AND CAUSES OF ACTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 47, O. XXI, RR. 100, 101.

I. L. R. 40 Mad. 964

MISJOINDER OF PARTIES AND CAUSES OF ACTION.

———— Decision that suit as framed not maintainable is a 'judgment' and is appealable under cl. 15 of the Letters Patent. RAMENDRA NATH ROY *v.* BROJENDRA NATH DAS (1917) . . . **21 C. W. N. 794**

MISTAKE.

——— **in description of plaintiff—**

See CIVIL PROCEDURE CODE ACT (V OF 1908), O. 1, R. 10.
I. L. R. 40 Mad. 743

MITAKSHARA.

See HINDU LAW—JOINT FAMILY.
I. L. R. 39 All. 437

MITTADAR OR ZAMINDAR.

——— **assignment of jodi under permanent sanad—**

See INAMDAR **I. L. R. 40 Mad. 93**

MIXED FUND.

See HINDU LAW—JOINT FAMILY PROPERTY . . **L. R. 44 I. A. 201**

MOKARARI LEASE.

See MINERALS . **L. R. 44 I. A. 246**

MORTGAGE.

COL.

1. ASSIGNMENT 208
2. BY GUARDIAN . . . 209
3. CONSTRUCTION . . . 209
4. EXONERATION . . . 212
5. MORTGAGEE, RIGHTS OF . . 212
6. REDEMPTION 212
7. SALE OF MORTGAGED PROPERTY 213
8. USUFRUCTUARY MORTGAGE . 214

See MORTGAGE DECREE.

See MORTGAGE SUIT.

See USUFRUCTUARY MORTGAGE.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS. 278, 282, 283, 287.
I. L. R. 41 Bom. 64

See CIVIL PROCEDURE CODE (1908), O. II, R. 2; O. XXXIV, RR. 2, 4.
I. L. R. 39 All. 506

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 5.
I. L. R. 39 All. 641

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 14.
I. L. R. 39 All. 36

See DEKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 13.
I. L. R. 41 Bom. 453

See EVIDENCE. **I. L. R. 44 Calc. 345**

See EVIDENCE ACT (I OF 1872), SS. 68, 69.
I. L. R. 39 All. 241

See EVIDENCE ACT (I OF 1872), S. 92.
I. L. R. 39 All. 300

See HINDU LAW—ALIENATION.
I. L. R. 39 All. 500

See HINDU LAW—JOINT FAMILY.
I. L. R. 39 All. 437

See MORTGAGE DEED.
I. L. R. 41 Bom. 384

See MORTGAGOR OR MORTGAGEE.
I. L. R. 41 Bom. 357

See PENALTY . **I. L. R. 44 Calc. 162**

MORTGAGE—*contd.*

See REGISTRATION ACT (XVI OF 1908), S. 17 . . **I. L. R. 41 Bom. 510**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 58 . **I. L. R. 39 All. 244**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 83, 84.
I. L. R. 39 All. 719

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 91 . **I. L. R. 39 All. 536**

See VENDOR AND PURCHASER.
I. L. R. 41 Bom. 300

——— **by conditional sale—**

See PRE-EMPTION **I. L. R. 39 All. 544**

——— **by deposit of title-deeds—**

See REGISTRATION ACT (XVI OF 1908), S. 49 . . **I. L. R. 40 Mad. 547**

——— **by Karta—**

See HINDU LAW—JOINT FAMILY PROPERTY . . **L. R. 44 I. A. 163**

——— **by Talukdar—**

See BROACH AND KAIRA INCUMBERED ESTATES ACT (XXI OF 1881), S. 28.
I. L. R. 41 Bom. 546

——— **intention to—**

See EVIDENCE . **L. R. 44 I. A. 236**

——— **money borrowed on, suit to recover—**

See HINDU LAW—ENDOWMENT.
I. L. R. 40 Mad. 402

——— **of occupancy holding —**

See N. W. P. RENT ACT (XII OF 1881), S. 9 . . **I. L. R. 39 All. 186**

——— **of rights of Maha Brahmins—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 9, 58. **I. L. R. 39 All. 196**

——— **proof of—**

See EVIDENCE ACT (I OF 1872), SS. 68, 69.
I. L. R. 39 All. 109, 112

——— **surplus proceeds—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 69. **I. L. R. 40 Mad. 767**

——— **with possession by lessee—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 108 (J).
I. L. R. 40 Mad. 1111

1. ASSIGNMENT.

——— *Suit by asignee of mortgage-bond—Set-off by the defendant of a decree-debt against the assignee—Equitable set-off, whether allowable—Transfer of Property Act (IV of 1882), ss. 3 and 132—Actionable claim, nature of.* The doctrine of equitable set-off is always confined to unascertained sums arising out of the same transaction. *Subramanian Chettiar* v. *Muthuswami Aiyangar, 17 Mad. L. J., 481,* dissented from. Where a mortgage is transferred without the privity of the mortgagor, the transferee takes subject to the state of account between the mortgagor and mortgagee at the date of the transfer, but not subject to any independent debt in no way connected with the mortgage. *Turner* v. *Smith,* [*1901*] *1 Ch. 742,*

MORTGAGE—*contd.*

1. ASSIGNMENT—*concld.*

followed. *Chinnayya Rawuthan* v. *Chidambaram Chetti, I. L. R. 2 Mad. 212,* distinguished. SUBRAMANIA AYYAR v. SUBRAMANIA PATTAR (1916).

I. L. R. 40 Mad. 683

2. BY GUARDIAN.

1. ——————— *By certificated guardian—Sanction to raise loan granted by District Judge but subsequently revoked—Money lent without notice of revocation and applied by guardian for minor's benefit—Effect of the revocation of sanction on the mortgage—Rate of interest.* The certificated guardian of a minor obtained the leave of the District Judge to raise a loan for a certain amount from the plaintiff. Subsequently the District Judge called upon the guardian to state whether the mortgage had been executed or not and on the guardian's failure to do so the Judge revoked the order. No notice of revocation was given either to the plaintiff or the guardian and the plaintiff advanced the money on the mortgage which was executed by the guardian and the entire amount was applied to the benefit of the minor's estate. The rate of interest was not placed before the District Judge and was not sanctioned by him but that stipulated in the mortgage bond was Rs. 1-8 with annual rests: *Held,* that even assuming that the order of the District Judge revoking the leave was effective as against the plaintiff the transaction stood in the same position as if there was no sanction by the Judge to the certificated guardian. The order was merely a voidable one under s. 30 of the Guardians and Wards Act at the instance of the minor on coming of age after restoration of the benefit received by him under the order and the plaintiff was entitled to a decree for the amount advanced by him on the mortgage bond but only to interest at the rate of 12 per cent. simple interest. MANASHARAM DAS *v.* AHMED HOSAIN PRODHAN (1916) . **21 C. W. N. 63**

2. ——————— *Mortgage executed by purdanashin lady as guardian of minor son with sanction of District Judge—Lender, if justified in relying on Court's sanction and making no further enquiry—Application of money borrowed, lender if bound to see to.* A *purdanashin* lady acting as guardian of her minor son applied to the District Judge for raising a loan by mortgage and the District Judge being satisfied as to the necessity of the loan sanctioned it. In a suit on the mortgage it was pleaded, *inter alia,* that there was no necessity for a considerable portion of the loan: *Held,* that the lender was not bound to go behind the order of the District Judge sanctioning the loan and was entitled to rely upon it, and if he acted *bonâ fide* he was not bound to see to the application of the money. AKHIL CHANDRA SAHA *v.* GIRISH CHANDRA SAHA (1917). **21 C. W. N. 864**

3. CONSTRUCTION.

1. ——————— *Agreement postponing payment of interest and selling property to mortgagee, if not then paid—Construction of contract—Mode of calculating the manner of payment of purchase-money under the contract on execution of decree or specific performance—Delay in transfer of property to mortgagee—Rules of English Courts as to rights of Vendor and Purchaser—Transfer of Property Act (IV of 1882), s. 54.* A mortgage

MORTGAGE—*contd.*

3. CONSTRUCTION—*contd.*

deed of certain land was executed in favour of the appellant to secure re-payment of Rs. 50,000 with interest, which the mortgagor expressly covenanted to pay, on 30th December 1905, which we afterwards extended for three months from 3rd January 1906. On 4th April 1906, the mortgagor, being unable to pay the interest, wrote as follows to the mortgagee: "I write this to inform you that as I have not got the interest due on Rs. 50,000 ready now, I request you to give me three months more for payment to you of all interest due thereon. Should I fail to do so on or before 6th July 1906, I agree to the whole land being sold to you for Rupees one lakh (Rs. 1,00,000). After deducting out of this amount Rs. 50,000 already received by me and all interest due thereon, the balance should be paid to me when the land shall become yours unconditionally." The mortgagee agreed to these terms, and the loan was renewed on 6th April 1906, the interest was not paid on 6th July, and mortgagor refused to execute a conveyance of the property. In a suit for specified performance of the contract of 4th April 1906, the mortgagee obtained a decree in May 1909, but he only entered into possession of the property on 24th March 1911. On an application for execution of the decree, a question arose as to the manner in which the purchase money payable under the contract ought to be calculated, and an Appellate Bench of the Chief Court decided that the mortgagee was only entitled to bring into account the amount due for principal and interest up to 6th July 1906. *Held* by the Judicial Committee (reversing that decision), that on the true construction of the contract, the appellant was entitled to deduct interest up to the date of his getting possession. The general rules by which the rights of vendors and purchasers are regulated were not applicable here, because the rights as to the payment of interest were governed by the express provisions of the contract. *Semble:* The rules of English Courts of Equity had no application to the sale of real estate is Lower Burma, s. 54 of the Transfer of Property Act expressly providing that (apart from a registered instrument) such a contract created no interest in, or charge upon, the land. MAUNG SHWE GOH *v.* MAUNG INN, (1916).

I. L. R. 44 Calc. 542

2. ——————— *Evidence Act (I of 1872), s. 92—Oral evidence to vary terms of mortgage admissibility of—Contract Act (IX of 1872), s. 74—Stipulation to pay exorbitant rate of interest, if stipulation by way of penalty—Contract Act, s. 44—Release of one debtor, if releases co-debtors.* A mortgage executed by six persons each of whom mortgaged a quantity of land to secure the loan provided that each of the mortgagors was liable for the whole amount of the mortgage and interest and that the loan should be repaid within two months with interest at one anna in the rupee per mensem and in case of default the interest was to run at that rate till payment: *Held,* that under s. 92 of the Evidence Act, evidence to prove a verbal agreement that the mortgagee would hold each of the mortgagors liable for his own share only was inadmissible. That the agreement to pay interest at 75 per cent. per annum was in the circumstances of the case a stipulation by way of penalty and the mortgagee was entitled under s. 74 of the Contract Act to only reasonable compensation

MORTGAGE—*contd.*

3. CONSTRUCTION—*contd.*

which in this case was interest at 15 per cent. *Per* MOOKERJEE, *J.*—That it is competent to a Court to grant relief whenever the stipulation for payment of interest at a specified rate appears to the Court to be a stipulation by way of penalty. What constitutes a stipulation by way of penalty must be determined in each individual case upon its own special circumstances. *Per* SANDERSON *C. J.*—Release by the mortgagee of one of several co-mortgagors without expressly reserving his remedies against the others, does not release the latter. SANAT KUMAR DAS *v.* INDRA NATH BARMAN (1916). **21 C. W. N. 740**

3. ——— *Question as to whether mortgage was or was not extinguished by subsequent mortgage—Intention to release it shown by return of mortgage deed—Intention frustrated by subsequent mortgage becoming unenforceable—Plea not consistent with equity and good conscience—Contract Act (IX of 1872) s. 41—Contract not performed.* The question in this appeal was whether the appellants could enforce against the respondents a mortgage, dated the 13th of November 1876, for Rs. 5,500 of a five-sixth share in a certain mauza. The mortgagor died leaving a widow and a separated nephew who was the owner of the other one-sixth share of the mauza, which, in 1879 and 1881, he mortgaged to the same mortgagee for Rs. 1,000 and Rs. 3,000 respectively. In September and October 1887, the widow and the nephew executed two mortgages to the same mortgagee, each purporting to affect the entire mauza, the first being in respect of the principal and interest due on the mortgage of 1876, and the second for the principal and interest due on the nephew's mortgages of 1879 and 1881. On the execution of these the mortgagee handed the mortgage deed of 1876 to the nephew. In 1896 the mortgagee brought a suit on the basis of the mortgages of 1887 in which a decree was made against the entire mauza. The nephew and the widow both appealed, but the nephew died and his heirs (the respondents in the present appeal abandoned his appeal. The widow's appeal was allowed by the High Court it being held that the deeds of 1887 (even if executed by her) were not binding on her. Pending an appeal by the mortgagee to the Privy Council the widow died, and the respondents in the present appeal were made parties in her place as heirs of her husband, the mortgagor of the deed of 1876: they succeeded therefore to the property subject to that mortgage, but free from any further charge created by the nephew. *Held* that the intention of the mortgagee after the two deeds of 1887 were executed was to accept in them a new security but that intention was entirely frustrated by the fact that the deeds of 1887 were held to be not binding on the widow; and it was not in accordance with equity and good conscience that the respondents, who had successfully maintained that the transaction embodied in the deeds of 1887 was not binding on the widow, and consequently did not bind them as the heirs of her husband, should now claim the benefit of that transaction as a release of the mortgage of 1876. Their Lordships therefore, in the events that had happened, were of opinion that the mortgage of 1876 was wholly unaffected by the mortgages of 1887. S. 41 of the Contract Act (IX of 1872) on which the High Court had relied had no application to the present case; it applies only where a contract has been in fact performed by some person other than the person bound thereby. Here the contract contained in the mortgage of 1876 had not in fact been performed at all. HAR CHANDI LAL *v.* SHEORAJ SINGH (1916) . **I. L. R. 39 All. 178**

MORTGAGE—*contd.*

3. CONSTRUCTION—*concld.*

4. EXONERATION.

——— *Suit for sale of one item exonerating other items mortgaged—Right of mortgagee to exonerate—Contribution, duty of, whether lost by exoneration—Transfer of Property Act (IV of 1882), ss. 60 and 82.* A mortgagee seeking to realize the amount due to him brought a suit for sale of one only of the items mortgaged impleading therein the mortgagor and the person who purchased the equity of redemption in the one item in execution of a money decree. The mortgagee exonerated from liability the other items mortgaged: *Held* by the FULL BENCH that, a mortgagee voluntarily releasing from the suit a portion of the mortgaged property is not bound to abate a proportionate part of the debt and is entitled to recover the whole of the mortgage, amount from any portion of the mortgaged property. *Ponnusami Mudaliyar* v. *Srinivasa Naickan, I.L.R. 31 Mad. 333,* and *Surjiram Marwari* v. *Barhamdeo Persad, 1 C.L.J. 337,* dissented from. *Semble:* A release of certain items by the mortgagee has not the effect of releasing those items from liability for contribution under s. 82 of the Transfer of Property Act. *Jugal Kishore Sahu* v. *Kedar Nath, I. L. R. 34 All. 606,* referred to. PERUMAL PILLAI *v.* RAMAN CHETTIAR (1917) **I. L. R. 40 Mad. 968**

5. MORTGAGEE, RIGHTS OF.

——— *Leasehold property—Mortgagee, if entitled to pay rent to preserve property from being lost.* The mortgagee is entitled to preserve mortgaged property from being lost for non-payment of rent. Where rent is thus paid after the preliminary decree and before the final decree, the money paid for rent should in the final decree be added to the mortgage money found due in the preliminary decree. ALLAHABAD BANK, LD. *v.* MATI LAL BARMAN, (1916) **I. L. R. 44 Calc. 448**

6. REDEMPTION.

1. ——— *Suit for redemption—Adverse possession—Mortgagee in proprietary possession under an agreement unregistered but acted upon for a very long period.* The parties to a mortgage by conditional sale, executed in 1869, entered into an agreement in 1876 whereby the mortgagor gave up all his equity of redemption in the property mortgaged. The agreement was not registered, but both the parties consented to the complete transfer of the equity of redemption and both parties acted on the agreement for very nearly forty years. *Held,* on a suit being brought in 1912 for redemption of the mortgage of 1869, that the mortgagees or their predecessors in title had been in adverse possession since the year 1876, and the suit was barred by limitation. *Mahomed Musa* v. *Aghore Kumar Ganguli, I. L. R. 42 Calc. 801,* and *Usman Khan* v. *N. Dasanna*

MORTGAGE—*contd.*

6. REDEMPTION—*concld.*

I. L. R. 37 Mad. 545, referred to. KHEDU RAI *v.* SHEO PARSON RAI (1917) **I. L. R. 39 All. 423**

2. ——— *Suit for redemption—Major portion of mortgaged property purchased by mortgagee—Suit by one only of the heirs of the mortgagor to redeem the whole of the remaining share in the mortgaged property.* Out of the original 16 annas of a village which was the subject of a usufructuary mortgage, the mortgagee acquired by purchase 13 annas and 4 pies. After the death of the mortgagor, one of his heirs sued to redeem the whole of the remaining 2 annas and 8 pies. The other heirs were made parties, the suit as *pro formâ* defendants and consented to the plaintiff redeeming to the whole of the remaining share. *Held*, that, notwithstanding this, the plaintiff was only entitled to redeem her own personal share. *Kuray Mal* v. *Puran Mal, I. L. R., 2 All. 565*, and *Munshi* v. *Daulat, I. L. R. 29 All. 262*, followed. *Sakharam Narayan* v. *Gopal Lakshuman, I. L. R. 10 Bom. 656* (*Note*), not followed. ZAIB-UN-NISSA BIBI *v.* MAHARAJA PARBHU NARAIN SINGH (1917) **I L. R. 39 All. 618**

3. ——— *Annuity provided for by terms of deed—Equity of redemption acquired by mortgagee—Suit by heirs of annuitant to recover arrears of annuity.* By the terms of a mortgage-deed, an annuity or *malikana* charge was made payable to one Musammatt Turab-un-nissa and her heirs by the mortgagee. By a series of transactions the mortgagee ultimately became the owner of the equity of redemption in the whole of the mortgaged property. *Held*, that the mortgagee nevertheless still continued liable for the payment of the annuity secured by the mortgage. LACHMI NARAIN *v.* SAJJADI BEGAM(1917) **L. R. 39 All. 700**

7. SALE OF MORTGAGED PROPERTY.

1. ——— *Decree—Death of judgment-debtor after decree nisi but before order absolute—Order absolute made without bringing all the legal representatives on the record—Sale in execution of decree—Title of purchaser at such sale.* A Hindu widow was in possession of a one-sixth share of her husband's estate upon a partition made among her sons. One of the sons lived jointly with her. She made a mortgage of her share to raise money to pay off debt legally binding upon the estate. The mortgagee brought a suit against her and obtained the *decree nisi* against her. She then died, and the son who was living jointly with her, was alone brought on the record as her legal representative. An order absolute was obtained and the shares of the widow and the son who was joint with her were sold and purchased by plaintiffs. When they applied for mutation of names, they were opposed by the other sons. They thereupon commenced the present action for recovery of possession. *Held*, that the order absolute having been obtained against one only out of several heirs, there was not in existence any decree under which the interest of the other heirs could be sold, and consequently the plaintiffs could not obtain possession. *Malkarjun* v. *Narhari, I. L. R.*

MORTGAGE—*contd.*

7. SALE OF MORTGAGED PROPERTY—*concld*

25 Bom. 337, distinguished. KUNDAN SINGH *v.* SURJA KUNWAR (1916) **I. L. R. 39 All. 67**

2. ——— *Mortgage comprising both fixed-rate and occupancy holdings executed before the passing of the Agra Tenancy Act, 1901—Suit for sale of the fixed-rate holdings only.* A mortgage made prior to the passing of the Agra Tenancy Act, 1901, comprised both occupancy and fixed-rate holdings. The mortgagee brought a suit for sale of the fixed-rate holdings only. *Held*, that the mortgage, so far as it related to the fixed-rate holdings, was not bad and these being distinct from the occupancy holdings, the suit was maintainable. *Kanhai* v. *Tilak, 16 Indian Cases 42*, and *Badri Mallah* v. *Sudama Mal, 10 All. L. J. 176*, distinguished. RAJENDRA PRASAD *v.* RAM JATAN RAI, (1917) **I. L. R. 39 All. 539**

8. USUFRUCTUARY MORTGAGE.

——— *Usufructuary mortgage, construction of—Balance remaining due to mortgagee at end of term of mortgage—Allegation in plaint of wrongful acts by mortgagor by which mortgagee was deprived of part of his security—Transfer of Property Act (IV of 1882), ss. 58, 59 and 68—Mortgage deed unattested and not enforceable as a mortgage—Privy Council, practice of—Reinstatement and rehearing after decision of case ex parte.* The question for determination on this appeal was whether the respondents (mortgagees) were entitled to recover from the appellant (mortgagor) the balance due on a usufructuary mortgage dated 14th April 1896, where it was alleged that they had been deprived of part of their security by the wrongful acts of the mortgagor. It had been calculated that the amount borrowed, with interest, would be paid off by the rents of the properties mortgaged, on 14th January 1903 when they were to be returned to the mortgagor. Both parties acted on the deed, but on the date mentioned it was found that the mortgagee in possession had not by the collection of the rents received sufficient to discharge the principal of the loan with interest as mentioned in the deed. In a suit brought by the mortgagee on 13th January 1909, the deficiency was attributed in paragraphs 6 and 7 of the plaint to the facts that the defendant (mortgagor) had taken rents which should have gone to the mortgagee, but which had not been paid over to him by the mortgagor. and that the rents in some cases were less than those mentioned in the deed, and those were wrongful acts complained of. The claim was for a mortgage decree under O. XXXIV, r. 4 of the Civil Procedure Code, 1908, or in the alternative for a decree for the amount due on the footing of the personal liability of the mortgagor. In the course of the suit it appeared that the mortgage deed had not been attested and the Subordinate Judge held that it could not, having regard to s. 59 of the Transfer of Property Act (IV of 1882) be enforced as a mortgage, which decision as it was not appealed from became final. The sole question therefore was whether the mortgagor was personally liable. The facts on which the allegations of wrongful acts by the mortgagor were based were not investigated, but both Courts in India held that on the construc-

MORTGAGE—*concld.*

8. USUFRUCTUARY MORTGAGE—*concld.*

tion of the deed it imposed a personal liability on the mortgagor and they made decrees in his favour. *Held* (reversing those decisions), that the nature and terms of the deed were such as to show that it was not originally intended that the mortgagor should be personally liable. The respondent ought to be given an opportunity of proving the allegations in paragraphs 6 and 7 of the plaint and of establishing that those facts were sufficient to bring s. 68 of the Transfer of Property Act into operation. The position of the mortgagor under that section could not, however, by reason of the deed, be better than it would have been if the mortgage had been duly attested. The case was for that purpose remitted to India for further trial. After the appeal had been heard *ex parte* and judgment had been given in favour of the appellant, the respondents were allowed to have it reinstated and reheard on the ground that the person with whom they came to an agreement to defend the appeal on their behalf, and to whom they advanced funds to pay the expenses of entering appearance, and taking other necessary steps in the conduct of the appeal, defrauded them, misappropriated the money without doing anything in the matter of the appeal, and left them in complete ignorance of its progress, until they discovered that there was not a word of truth in his misrepresentations and that the appeal had been decided *ex parte* against them. They had to pay the costs of the first hearing as the appellant was in no way to blame. RAM NARAIN SINGH *v.* ADHINDRA NATH MUKHERJI (1916) **I. L. R. 44 Calc. 388**

MORTGAGE-DECREE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 48. **I. L. R. 40 Mad. 989**

See SALE IN EXECUTION OF DECREE. **I. L. R. 44 Calc. 524**

MORTGAGE-DEED.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 59. **I. L. R. 41 Bom. 384**

MORTGAGE SUIT.

——————— *Preliminary degree—Payment out of Court if may be proved, though not certified, to oppose passing of a decree absolute—Civil Procedure Code (Act V of 1908), O. XXI, r. 2, O. XXXIV, r. 5.* Payment in pursuance of a preliminary decree in a mortgage suit, if not made in Court, must be certified under O. XXI, r. 2, failing which the Court has no discretion except to follow the statutory form of the decree when no payment has been made into Court as mentioned in O. XXXIV, r. 5, unless there has been adjustment made under O. XXI, r. 2 of the Civil Procedure Code. PIRAN BIBI *v.* JITENDRA MOHUN MUKHERJI (1917) . . . . . **21 C. W. N. 920**

MORTGAGEE.

See ADVERSE POSSESSION. **I. L. R. 44 Calc. 425**

See PUISNE MORTGAGEE. **I. L. R. 40 Mad. 77**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 67. **I. L. R. 40 Mad. 77**

MORTGAGEE—*concld.*

——————— **right of, to exonerate—**

See MORTGAGE . **I. L. R. 40 Mad. 988**

——————— **right of, to pay rent—**

See MORTGAGE. **I. L. R. 44 Calc. 448**

MORTGAGEE IN POSSESSION.

See SALE FOR ARREARS OF REVENUE. **I. L. R. 44 Calc. 573**

MORTGAGOR.

See ADVERSE POSSESSION. **I. L. R. 44 Calc. 425**

MORTGAGOR AND MORTGAGEE.

——————— *Suit to redeem—Decree obtained by mortgagee for a claim independent of the mortgage—Mortgagee purchasing the equity of redemption in execution of the decree—Leave to bid not obtained—Irregularity of practice—Sale not a nullity.* In 1888, plaintiffs mortgaged the property in suit with possession to defendant No. 1. In 1897, the defendant brought a suit against the mortgagor for a claim independent of the mortgage and in execution of the decree obtained therein the equity of redemption was sold and purchased *benami* by the defendant. In 1913, the plaintiffs sued to redeem and recover the property. The trial Court held that the purchase by the defendant mortgagee was valid until it was set aside and not having been set aside in execution proceedings was binding upon the plaintiffs. The lower Appellate Court reversed the decree holding that the mortgagee purchased the property without leave to bid and therefore the mortgagor could disregard the sale and redeem. On appeal to the High Court: *Held*, reversing the decree, that the disregard of the statutory provision that leave to bid should be obtained by a judgment-creditor was a mere irregularity of practice, and was not a fundamental breach of trust which nullified the apparent effect of the Court-sale. GANESH NARAIN *v.* GOPAL VISHNU (1916) **I. L. R. 41 Bom. 357**

MOSQUE.

See MOSQUE PROPERTY, SUIT FOR.

MOSQUE PROPERTY, SUIT FOR.

——————— *Leave of Court—Civil Procedure Code (Act V of 1908) O. I., r. 8—Failure to obtain permission before institution of the suit—Its effect—Objection for want of such permission, if fatal to the suit.* There is no doubt that the proper course is to obtain permission under O.I, r. 8 before the suit is instituted, but there is nothing in the rule to show that if it is not so done, it cannot be granted afterwards. The mere fact that the leave of the Court was not obtained before the institution of the suit should not result in the dismissal of the suit. Permission under O. I, r. 8 can be granted subseqent to the filing of the suit. The objection under s. 30 of the old Civil Procedure Code which corresponds with O. I, r. 8 of the present Code, is not one affecting the jurisdiction of the Court. *Fernandez* v. *Rodrigues*, *I. L. R. 21 Bom. 784*, *Chennu Menon* v. *Krishnan*, *I. L. R. 25 Mad. 399*, *Srinivasa Chariar* v. *Raghava Chariar*, *I. L. R. 23 Mad. 28*, *Baldeo Bharthi* v. *Bir Gir*, *I. L. R. 22 All. 269*, followed. *Jan. Ali* v. *Ram Nath Mundul*, *I. L. R. 8 Calc. 32*, *Lutifunnissa Bibi* v. *Nazirun Bibi*, *I. L. R. 11 Calc. 33*, referred to. *Oriental Bank Corporation*

MOSQUE PROPERTY, SUIT FOR—*concld.*

v. *Gobind Lall, I. L. R. 9 Calc. 604*, dissented from. *Dhunput Singh* v. *Paresh Nath Singh, I. L. R. 21 Calc. 180*, distinguished. AHMED ALI *v.* ABDUL MAJID (1916) **I. L. R. 44 Calc. 258**

MUAFI GRANT.

See AGRA TENANCY ACT (II OF 1901), S. 158. **I. L. R. 39 All. 689**

MUNICIPAL BYE-LAWS.

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916) SS. 209, 210. **I. L. R. 39 All. 386**

MUNICIPAL OFFENCE.

——— prosecution for—

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916), SS. 185, 186. **I. L. R. 39 All. 482**

MUNICIPALITY.

See BOMBAY MUNICIPAL ACT (BOM. III OF 1888), S. 349 B. **I. L. R. 41 Bom. 741**

See BOMBAY MUNICIPAL ACT (BOM. III OF 1888), SS. 418, 461, CL. (*o*). **I. L. R. 41 Bom. 580**

See PUBLIC DRAIN. **I. L. R. 44 Calc. 689**

See RAILWAYS ACT (IX OF 1890 AS AMENDED BY ACT IX OF 1896), S. 7. **I. L. R. 41 Bom. 291**

MURDER.

See PENAL CODE (ACT XLV OF 1860) SS. 299, 301. **I. L. R. 39 All. 161**

See PENAL CODE (ACT XLV OF 1860), S. 300, CL. (*3*). **I. L. R. 41 Bom. 27**

MUTAWALLI.

——— appointment of a minor as—

See ELECTION. **I. L. R. 40 Mad. 941**

MUTT, HEAD OF.

——— *Dharmapuram Adhinam, Pandarasannadhi of—Junior Pandarasannadhi—Mode of appointment of—Nomination by will—Ordination—Abishegam, effect of—Nature of the office—Removal of junior from office, grounds of—Power of Pandarasannadhi to remove junior, if at pleasure or for good cause—Notice of charges, necessity for—Dismissal without notice or opportunity for defence, validity of—Compromise-decree, nature and effect of—Suit for setting aside, necessity for—Limitation for such suit—Compromise-decree partly illegal, effect of—Decree, if void altogether.* The Pandarasannadhi or the head of the Dharmapuram mutt, has no power to dismiss at his pleasure the junior Pandarasannadhi of the mutt from his office though he can do so for good cause; but a dismissal, directed by the former without giving the latter any notice of the charges alleged against him or an opportunity for making his defence thereto, is wholly void and inoperative in law. The nomination and ordination of a junior Pandarasannadhi is the customary mode of providing for the line of succession in mutts. The position of a junior Pandarasannadhi during the lifetime of the senior is analogous to that of a co-adjutor with the right of succession, under

MUTT, HEAD OF—*concld.*

the Canon law, a right of which he cannot be deprived except for grave cause. Where an office is held at pleasure the incumbent may be removed even on charges of misconduct without any opportunity of being heard in his defence because he is removable at pleasure without any misconduct at all, but in all other cases the objection of want of notice can never be got over. *Rex* v. *Chancellor and Master of the University to Cambridge*, 1 Str. 557, followed. A consent-decree is binding on the parties and their representatives until it is set aside just as much as if it had been passed after contest. *Fateh Chand* v. *Narsing Das, 22 C. L. J. 383*, and *In re South American and Mexican Company Ex parte Bank of England, [1895] 1 Ch. 37*, followed. A suit to set aside a compromise-decree will be barred after three years from the date of the decree. An illegality in a compromise-decree in so far as it restrains the Pandarasannadhi from removing the junior in case of any future misconduct is not a ground for setting aside the decree altogether in a suit instituted for that purpose. *Kearney* v. *Whitehaven Colliery Co., [1893] 1 Q. B. 700*, referred to. *Per* SESHAGIRI AYYAR, *J.* Where a suit is brought in a representative capacity, the legal representative must show that the estate devolved on him; the estate in this connection is not the estate which the deceased had but the estate which he represented, that is, the estate which he laid claim to. Mutts are not voluntary associations or brotherhoods or proprietary clubs. A person who has been appointed as a junior Pandarasannadhi to whom *abishegam* has been duly performed, acquires a status which is not lost, unless he is removed from his office for good cause. An ascetic who holds an office like that of a head of a mutt or a junior Pandarasannadhi does not incur a forfeiture of his office by reason of his immorality but is liable to be removed from his office on proof of his immoral conduct. In a suit by a junior Pandarasannadhi against the head of a mutt disputing the validity of his dismissal from his office, it is competent to the head of the mutt to enter into a compromise which does not affect the usage of the institution whereby the senior Pandarasannadhi recognizes the title of the junior under his original appointment as subsisting and admits that his removal was invalid as the grounds of dismissal were not justifiable; a decree in accordance therewith is not illegal. TIRUVAMBALA DESIKAR *v.* MANIKKA VACHAKA DESIKAR (1915) **I. L. R. 40 Mad. 177**

N

NATIVE INDIAN SUBJECT OF HIS MAJESTY.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 188. **I. L. R. 41 Bom. 667**

NEGOTIABLE INSTRUMENT.

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), S. 22. **I. L. R. 39 All. 86**

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

——— s. 22—*Hundi payable after sixty-one days—Date of maturity—Liability of endorsee.*

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—*concld.*

——— s. 22—*concld.*

Held, (i) that a bill of exchange which is not expressed to be payable on demand, at sight or on presentment, is at maturity on the third day after the day on which it is expressed to be payable, and (ii) that a hundi drawn in the customary form, that is, expressed to be payable after so many days, does not require to be presented for acceptance in order to render liable thereon the payees, who had endorsed it in favour of a third party. GANGA PRASAD *v.* HIRA LAL (1916) **I. L. R. 39 All. 86**

——— s. 27—*Promissory note executed under the authority of a marksman but not marked by him, validity of—Contract Act (IX of 1872), s. 226, applicability of.* The law of Agency as stated in s. 226 of the Indian Contract Act is applicable to Negotiable Instruments and a promissory note executed by a person under the authority of a marksman is valid though the marksman has not affixed his mark thereto. BALAYYA *v.* SUBBAYYA (1917) . . . **I. L. R. 40 Mad. 1171**

——— ss. 32, 43—

See BILL OF EXCHANGE. **I. L. R. 41 Bom. 566**

——— ss. 64, 76—*Hundi—Presentation—Liability of drawer—Burden of proof.* Where it is sought, with reference to s. 76 (*d*) of the Negotiable Instruments Act, 1881, to render liable the drawer of a *hundi* which has not been presented for payment, the *onus* of proving that the drawer could not suffer damage from the want of presentment is on the party who wants to excuse himself for the non-presentation of the *hundi*, *Madho Ram* v. *Durga Prasad*, *I. L. R. 33 All. 4*, followed. *Phul Chand* v. *Ganga Ghulam*, *I. L. R. 21 All. 450*, distinguished. GAYA DIN *v.* SRI RAM (1917). **I. L. R. 39 All. 364**

NOMINATION OF JUNIOR OR SENIOR.

See BARRISTER . **I. L. R. 44 Calc. 741**

NON-OCCUPANCY RAIYAT.

1. ——— *Khamar land—Statute—Headings of Chapters—Bengal Tenancy Act (VIII of 1885), Ch. XI, s. 45 and Sch. III, Cl. 1 (a).* A tenant of a *khamar* land is not a non-occupancy *raiyat*. The heading of a chapter in a statute may be looked at for the purpose of interpreting a section in the statute. DWARKANATH CHAUDHURI *v.* TAFAZAR RAHAMAN SARKAR (1916) **I. L. R. 44 Calc. 267**

2. ——— *Under registered lease, eviction of—"Jote," meaning of—"Mahal," meaning of.* That a non-occupancy *raiyat* who has been admitted to occupation of the land under a registered lease is liable to be ejected on the expiry of the term of his lease but it being found that the defendants were not admitted into occupation of the land by the *kabuliyats*, it was necessary to determine whether the defendant in each case was in occupation as tenant of the particular lands in respect of which he subsequently executed his *kabuliyat*. That the description in the *kabuliyat* "without right *jote mahal*" was not clear to show that the defendants admitted that the plaintiffs were *raiyats*. That the words "without right' standing alone might mean that the plaintiffs were

NON-OCCUPANCY RAIYAT—*concld.*

owners of a non-occupancy *jote* but the word "*jote*" does not necessarily mean the interest of a cultivator and the word "*mahal*" is not used in connection with the interest of a *raiyat*. That the statement in the lease as to the purpose of the tenancy and the fact that the tenancy was treated all along by Government as non-occupancy *jote* were in favour of the plaintiffs but not conclusive against the defendants. RAJANI KANTHA MUKHERJEE *v.* YUSUF ALI (1916) . **21 C. W. N. 188**

NON-PERFORMANCE OF WORK.

See BARRISTER . **I. L. R. 44 Calc. 741**

NORTH-WESTERN PROVINCES ACTS.

See UNITED PROVINCES AND OUDH ACTS.

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881).

——— *Sale of zamindari—Agreement to relinquish ex-proprietary right in sir lands—Void contract.* In 1899 one R. D., the widow of a Hindu who had died heavily in debt, sold most of her husband's property to his principal creditor D. S. By the terms of the sale deed the vendor agreed to file a relinquishment of her ex-proprietary rights in the sir lands and the vendee agreed to certify to the Civil Court full satisfaction of the claim under his decree. Nothing, however, was done to carry out this agreement until 1901, when D. S. executed a document in favour of R. D., in which was stated that the parties had come to an agreement, that R. D. was to file her relinquishment and in consideration thereof D. S. would file his certificate of satisfaction of his Civil Court decree, and further bound himself to pay to R. D. a monthly allowance of Rs. 5 for the rest of her life, which was to be a charge on the property transferred by the sale deed of 1899. *Held*, on suit by R. D. to recover arrears of her maintenance allowance from the transferees of the property which purported to have been charged with its payment, and from D. S. personally, that the arrangement between the parties was merely a device to get round the provisions of the Rent Law, and that the suit would not lie. *Moti Chand* v. *Ikraam-ullah Khan*, *I. L. R. 39 All. 173*, referred to. RATAN DEI *v.* DURGA SHANKAR BAJPAI (1917) . . **I. L. R. 39 All. 645**

——— s. 9—*Occupancy tenant—Usufructuary mortgage of holding—Relinquishment by mortgagor in favour of zamindar.* Where a mortgage with possession of an occupancy holding had been made by the tenant before the coming into force of the Agra Tenancy Act, 1901: *Held* that the tenant mortgagor could not defeat the rights of the mortgagees by surrendering the holding to the zamindar. CHHIDDU *v.* SHEO MANGAL SINGH (1916) **I. L. R. 39 All. 186**

NOTICE.

See REASONABLE NOTICE.

See EJECTMENT . **I. L. R. 44 Calc. 272**

See LAND ACQUISITION ACT (I OF 1894), S. 9. . . **I. L. R. 39 All. 534**

See LOSS OF GOODS. **I. L. R. 44 Calc. 16**

See RAILWAYS ACT (IX OF 1890), S. 77. **21 C. W. N. 751**

See SCHOOL-MASTER. **I. L. R. 44 Calc. 917**

NOTICE—*concld.*

See WITHDRAWAL OF SUIT.
I. L. R. 44 Calc. 454

———— of charges, necessity for—
See MUTT . **I. L. R. 40 Mad. 177**

———— dismissal without, or opportunity for defence—
See MUTT **I. L. R. 40 Mad. 177**

———— through Collector—
See RAILWAY ADMINISTRATION.
I. L. R. 44 Calc. 16

NOTICE TO GOVERNMENT.
See LOSS OF GOODS.
I. L. R. 44 Calc. 16

NOTICE TO QUIT.
See LANDLORD AND TENANT.
I. L. R. 44 Calc. 403

NUMBERS.
See TRADE-NAME, INFRINGEMENT OF.
I. L. R. 41 Bom. 49

O

OBSTRUCTION.
See PUBLIC PATHWAY.
I. L. R. 44 Calc. 61

OCCUPANCY.
See LAND REVENUE CODE (BOM. V OF 1879), S. 74 **I. L. R. 41 Bom. 170**

OCCUPANCY HOLDING.
See MORTGAGE. **I. L. R. 39 All. 539**
See NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881), S. 9.
I. L. R. 39 All. 186
See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 16, 36, 43.
I. L. R. 39 All. 120

1. ———— *Non-transferable occupancy holding—Under-raiyat—Whether fresh settlement holder required to serve notice on under-raiyat after ejectment of transferee by landlord—Notice—Bengal Tenancy Act (VIII of 1885), s. 49, cl. (b).* Where a person has obtained settlement of a holding from the superior landlord after the latter had ejected the transferee of the occupancy raiyat from the said holding as it was not transferable, he is not required to serve a notice to quit on the under-raiyat under s. 49 of the Bengal Tenancy Act in his suit for ejectment. *Nilkanta Chaki* v. *Ghatoo Sheikh, 4 C. W. N. 667,* and *Badan* v. *Rajeswari, 2 C. L. J. 570,* followed. *Lal Mahomed Sarkar* v. *Jagir Sheikh, 13 C. W. N. 913, Amirullah Mahomed* v. *Nazir Mahomed, I. L. R. 31 Calc. 932, Amirullah Mahomed* v. *Nazir Mahomed, I. L. R. 34 Calc. 104,* and *Raghunath Singh* v. *William Cox, 19 C. W. N. 268,* distinguished. JADAB SARDAR *v.* GOBINDA CHANDRA MANDAL (1916) . **I. L. R. 44 Calc. 272**

2. ———— *Occupancy holding held under joint family, not transferable without landlord's consent—Power of karta to recognise transfer.* The *karta* of a joint Hindu family has authority to consent on behalf of the joint family

OCCUPANCY HOLDING—*concld.*

to the transfer of an occupancy holding held by the tenants under the joint family as landlords and not transferable without their consent duly given by themselves or on their behalf. GOLAPDI MEAH *v.* PURNO CHANDRA DUTTA (1917) . . . . **21 C. W. N. 774**

3. ———— *Transferability—Attachment—Objection of raiyats—Consent of landlords.* A non-transferable occupancy holding or a part of it cannot be sold in execution of a decree for money obtained against the raiyat when the raiyat objects to the sale on the ground of non-transferability, even if the landlords give their consent to the sale. The above rule does not, as expressly laid down by the Full Bench in *Dayamayi* v. *Ananda Mohan Roy Chaudhuri, I. L. R. 42 Calc. 172; 18 C. W. N. 971,* apply to a sale held in execution of a decree founded on a mortgage or charge voluntarily made by the raiyat. *Badrannessa Choudhrani* v. *Alam Gazi, 19 C. W. N. 814,* referred to. *Ananda Das* v. *Rutnakar Panda, 7 C. W. N. 572, Shakaruddin Choudhry* v. *Rani Hemangini Dassi, 16 C. W. N. 420,* commented on. NARAYANI *v.* NABIN CHANDRA CHAUDHURI (1916)
I. L. R. 44 Calc. 720

OFFERINGS.
———— permanent alienation of—
See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 40 Mad. 212**

OFFICIAL ASSIGNEE.
———— prospect of litigation with—
See INSOLVENCY . **I. L. R 44 Calc. 374**

OFFICIAL RECEIVER.
———— whether a Court—
See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. (2) (*c*) AND (*g*), 22, 46, 52.
I. L. R. 40 Mad. 752

ONUS OF PROOF.
See BURDEN OF PROOF.

ORAL EVIDENCE.
See EVIDENCE ACT (I OF 1872), S. 91.
I. L. R. 41 Bom. 466

ORDINANCE.
See HABEAS CORPUS.
I. L. R. 44 Calc. 459

———— 1914—VI.
See COMMERCIAL INTERCOURSE WITH ENEMIES ORDINANCE.

OUDH ACT (XXII OF 1886).
———— *Civil and Revenue Courts, respective jurisdictions of, in zamindar's suit against holders of land—Suit for ejectment in Revenue Court—Defence that defendant proprietor or under-proprietor—Zamindar's suit for declaration in Civil Court—Right to use.* In Oudh in cases in which Act III of 1901 applies, the Court of Revenue has the exclusive jurisdiction to determine what is the status of a tenant of lands and what are the special or other terms upon which such tenant holds, and the Civil Courts have the exclusive jurisdiction to decide whether or not a person in possession of lands holds a proprietary or under-proprietary right in the lands. The question whether the person in possession holds a proprietary or

OUDH ACT (XXII OF 1886)—*concld.*

under-proprietary right when raised and persisted in the Revenue Court cannot be finally decided in that Court and the only remedy of the zamindar is a suit in the Civil Court for a declaration that the defendant has no such right, and when in such a suit the latter fails to prove such a right, the Court cannot refuse to make such a declaration. ABUL HUSAN *v.* PRAG (1916) **21 C. W. N. 582**

OWNER.

——— rights of—

See PUBLIC DRAIN.
I. L. R. 44 Calc. 689

P

PANCHAYAT.

See LIBEL . . **I. L. R. 39 All. 561**

PANDARASANNADHI.

See MUTT . **I. L. R. 40 Mad. 177**

PAPER CURRENCY ACT (II OF 1910).

——— s. 26—*Promissory note payable to a person or order or bearer, legality of—Right of suit on the note.* A promissory note payable to a person or order or bearer is illegal and void under s. 26 of the (Indian) Paper Currency Act (II of 1910) and a bearer cannot be given any decree for money in a suit on such a note. *Jetha Parkha* v. *Ramachandra Vithoba, I. L. R. 16 Bom. 689,* referred to. *Obiter :* If there is an obligation apart from the one under the note it may be enforced and the fact that the loan and the note are contemporaneous is not conclusive of the non-existence of such an obligation. *Shanmuganatha Chettiar* v. *Srinivasa Ayyar, 4 M. L. W. 27,* and *31 Mad. L. J. 138,* referred to. CHIDAMBARAM CHETTIAR *v.* AYYASAWMI THEVAN, (1916) . . . . **I. L. R. 40 Mad. 585**

PARDANASHIN LADY.

——— *Plea that promisor was not raised—Decree for specific performance—Court, if bound to raise the plea.* In a suit for specific performance of a contract of sale by the widow of a deceased Hindu and his executor, there were no pleas taken in defence either that the price agreed upon was inadequate or that one of the promisors was a *pardanashin* lady and no issue was raised or tried, on either of these points : *Held,* that neither of these points could be allowed to be raised by them on appeal. The High Court having reversed the decision of the Subordinate Judge on an issue as to payment by the purchaser of a sum of Rs. 1,500 to the vendors. *Held,* on the evidence, that the decision of the Subrordinate Judge was correct and should be restored. NAROTTAM DAS *v.* KEDAR NATH SAMANTA (1916) **21 C. W. N. 665**

PARDON.

See CRIMINAL PROCEDURE CODE, S. 339.
I. L. R. 39 All. 306

PARTIES.

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13 . . . **I. L. R. 39 All. 13**

See CONTRACT ACT (IX OF 1872), S. 23.
I. L. R. 39 All. 51, 58

See PARTITION SUIT.
I. L. R. 44 Calc. 28

PARTIES—*concld.*

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 22, 46.
I. L. R. 39 All. 152

——— exonerated defendant—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 47, O. XXI, RR. 100, 101.
I. L. R. 40 Mad. 964

——— power of Court to add—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 40 Mad. 110**

——— substitution of—

See LIMITATION . **L. R. 44 I. A. 218**

——— to conveyance—

See EVIDENCE . **L. R. 44 I. A. 236**

PARTITION.

See HINDU LAW—PARTITION.

See EVIDENCE ACT (I OF 1872), S. 91.
I. L. R. 41 Bom. 466

See PARTITION ACT (IV OF 1893), S. 4.
I. L. R. 39 All. 672

See PARTITION AND POSSESSION.

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), S. 118.
I. L. R. 39 All. 707

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), S. 233(*k*).
I. L. R. 39 All. 469

——— between an adopted son and an aurasa son of a Sudra—

See HINDU LAW—PARTITION.
I. L. R. 40 Mad. 632

——— *Suit for partition of rights of management of a temple—Joint Hindu family. Held,* that no suit will lie by a member of a joint Hindu family for partition of the right of management and superintendence of worship in a temple, such right, being in respect of property with regard to which none of the parties claim to have any personal pecuniary interest. *Sri Ram Lalji Maharaj* v. *Sri Gopal Lalji Maharaj, I. L. R. 19 All. 428,* and *Ramanathan Chetty* v. *Murugappa Chetty, I. L. R. 27 Mad. 192,* and, in appeal, *I. L. R. 29 Mad. 283,* referred to. PURAN MAL *v.* BIRJ LAL (1917) . . **I. L. R. 39 All. 651**

PARTITION ACT (IV OF 1893).

——— s. 4—*Suit for partition—Undertaking by defendants to purchase plaintiff's share in the subject matter of the suit.* Where the defendant to a suit for partition by metes and bounds has definitely undertaken, according to the provisions of s. 4 of the Partition Act, 1893, to purchase the share of the plaintiff in the property sought to be partitioned, he cannot be permitted to resile from his undertaking, and the court is bound to direct a sale. ILIAS AHMAD *v.* BULAQI CHAND (1917) **I. L. R. 39 All. 672**

PARTITION AND POSSESSION.

——— suit for—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. I, R. 3.
I. L. R. 40 Mad. 365

PARTITION SUIT.

See PRACTICE . **I. L. R. 44 Calc. 28**

PARTNERSHIP.

See CIVIL PROCEDURE CODE (1908), O. XXII, R. 4 . **I. L. R. 39 All. 551**

1. ——————— *Borrowing for partnership purposes—Promissory note, executed by two of three partners—No indication in promissory note of execution on behalf of partnership—Liability of the partner who was not a party to the note.* A promissory note was executed by two out of three partners of a firm for money then advanced to the executants for purposes of the firm. The promissory note did not contain any indication that it was executed on behalf of the firm. In a suit on the note by the promissee, *Held*, that even the third partner who did not execute the note was liable. *Per* SRINIVASA AYYANGAR, *J.* (*obiter*). An endorsee of the note cannot recover against the partner not executing the note. *Karmali Abdulla* v. *Karimji Jivaji*, *I. L. R. 39 Bom. 261*, followed. *Somasundaram* v. *Krishnamurthi*, *17 Mad. L. J. 126*, and *Muthu Sastrigal* v. *Viswanatha Pandhara Sannadhi*, *26 Mad. L. J. 19*, distinguished. SHANMUGANATHA CHETTIAR *v.* SRINIVASA AYYAR (1916).
I. L. R. 40 Mad. 727

2. ——————— *Suit by partner on a settled account though all accounts not settled—Purchase by partner of partnership property—Bailor and bailee's right to sue wrong-doer—Contract Act (IX of 1872), s. 180.* A partnership is constituted whenever the parties agree to carry on business or to share the profits in some way in common. An action by a partner for the balance of a settled account would not be restrained merely because there were other unsettled accounts between the parties. A partner is entitled to purchase partnership property provided there is full disclosure and the title of the plaintiff cannot be assailed merely on the ground that he has purchased partnership properties which he did with the assent of all the persons interested, the purchase being in no sense in contravention of the terms of the deed of agreement. Either the bailor or the bailee of a chattel may maintain an action in respect of it against a wrong-doer, the latter by virtue of his possession and the former by reason of his property. RAMANATH GAGOI *v.* PITAMBAR DEB GOSWAMI (1915)
21 C. W. N. 632

PART-PAYMENT.

See LIMITATION ACT (IX OF 1908), S. 20.
I. L. R. 41 Bom. 166

PAYMENT TOWARDS DEBT.

See LIMITATION . **I. L. R. 44 Calc. 567**

PECUNIARY SUFFICIENCY.

See SURETY . **I. L. R. 44 Calc. 737**

PEDIGREE.

——————— *Question of pedigree—Plaintiff and his witnesses, not directly cross-examined on the case raised by defendant—Court if should accept such case—Plaintiff's case believed by trial Court—Reversal by High Court on such basis, if correct.* Where the question was whether plaintiff A was the legitimate son of Muhammad Sher Khan by his wife Musammat Munna, and A himself and his witnesses gave evidence that he was, but the only question put to them in cross-examination was whether Muhammad Sher Khan had a woman named Sundaria in his keeping as a mistress, and when witnesses for the defendants were being examined, some attempt was made to prove that A was the son of another person of the name of Muhammad Sher Khan who had a mistress named Sundaria; and the trial Court believed A's case which was supported by strong and straightforward evidence on the record, and as to the case of the defendants held "that the whole story was a pure concoction and was unworthy of credit:" *Held*, agreeing with the trial Court, that the High Court on appeal was not justified in dismissing the plaintiff's suit on the view that "it was quite possible that the real truth was that the claimant was the son of Musammat Sundaria who was kept by Muhammad Sher Khan," having been influenced thereto by the fact that the suit was being financed by a co-plaintiff in whose favour A had executed a deed of sale in respect of a moiety of the property claimed and in accordance with which the litigation was being financed. ABDUL AZIZ *v.* TASADDUQ HUSSAIN (1917)
21 C. W. N. 873

PENAL CODE (ACT XLV OF 1860).

——————— **ss. 7, 27, 243—**

See COUNTERFEIT COIN.
I. L. R. 44 Calc. 477

——————— **s. 8—**

See PLEADER . **I. L. R. 44 Calc. 290**

——————— **ss. 71, 147, 323**—*Criminal Procedure Code, ss. 35 and 235—Separate convictions for rioting and causing hurt.* Where, several persons being on their trial on a charge of rioting, it appears that some of them have also committed the offence of causing simple hurt under s. 323 of the Indian Penal Code, there is no legal objection to charging such persons under that section and convicting them of, and sentencing them for such offence as well as for the offence of rioting. EMPEROR *v.* KATWARU RAI (1917) . **I. L. R. 39 All. 623**

——————— **s. 161**—*Illegal gratification to a public servant—Elements necessary for conviction.* It is not enough for a conviction under s. 161, Indian Penal Code, that the accused merely took a certain sum of money but it must be proved that he took the amount as a motive or reward for any of the purposes mentioned in the section. UPENDRA NATH CHOWDHURY *v.* KING-EMPEROR (1916)
21 C. W. N. 552

——————— **s. 176—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 565.
I. L. R. 40 Mad. 789

——————— **s. 180—**

See CRIMINAL PROCEDURE CODE, S. 364.
I. L. R. 39 All. 399

——————— **s. 211**—*False charge—Necessary constituents of offence under s. 211—Report to a police officer casting suspicion on certain persons.* In order to constitute an offence defined by s. 211 of the Indian Penal Code, the "charge" therein alluded to must be made to an officer or to a court who has power to investigate and send it for trial, and must be an accusation made, with the intention to set the law in motion. *Chenna Malli Gowda* v. *Emperor*, *I. L. R. 27 Mad. 129*, *Chinna Ramana*

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— s. 211—*concld.*

Gowd v. *Emperor, I. L. R. 31 Mad. 506*, and *Zorawar Singh* v. *King-Emperor, 11 All. L. J. 1106*, followed. The following statement was made to a police officer:—"I find there has been a theft: I suspect the persons named and I want an inquiry to be made." *Held*, that if the statement was false, the offence committed fell under s. 182 of the Indian Penal Code and not under s. 211. EMPEROR *v.* MATHURA PRASAD (1917) . **I. L. R. 39 All. 715**

——— ss. 211, 500—

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 970

——— s. 216—*Harbouring an offender—"Assistance" coming within meaning of the section, nature of.* To the knowledge of the petitioner warrants for the arrest of the petitioner's brother and a proclamation under s. 87, Criminal Procedure Code, were issued, the proclamation being duly published at the house in which the two brothers as joint owners used to reside. On information received the police interviewed the petitioner at his house and in answer to enquiries he replied that his brother was in the house and promised to produce him. He then went inside the house and after some delay returned with his brother's son and said that he had made a mistake and that it was the son who had come to the house the preceding evening. On search the petitioner's brother was found hiding in the house. The petitioner was convicted under s. 216, Indian Penal Code. *Held*, that the petitioner was rightly convicted. The ways in which assistance may be rendered need not for the purposes of s. 216 be restricted to methods which may properly be regarded as *ejusdem generis* or of a like nature with supplies of food or of other necessary articles. MUCHI MIAN *v.* EMPEROR (1917)
21 C. W. N. 1062

——— ss. 225, 332—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 54.
I. L. R. 40 Mad. 1028

——— ss. 299, 301—*Murder—Intention to kill one person, but death of another actually caused.* Where a person intending to kill one person kills another person by mistake, he is as much guilty of murder as if he had killed the person whom he intended to kill. *Public Prosecutor* v. *Mushunooru Suryanarayana Moorty, 13 Indian Cases 833*, and *Agnes Gore's Case, 77 English Rep. 853*, referred to. EMPEROR *v.* JEOLI (1916) . **I. L. R. 39 All. 161**

——— s. 300, cl. (*3*)—*Causing death—Single blow by an iron-shod stick—Culpable homicide not amounting to murder.* The accused and the deceased having quarrelled, the accused took an iron-shod stick, and struck one blow on the head of the deceased which caused his death. The accused having been convicted of murder, appealed to the High Court. *Held*, that the offence committed by the accused was not murder but culpable homicide not amounting to murder, because it was possible that the blow he struck exceeded in violence the injury he had in view at the moment of striking it. EMPEROR *v.* SARDARKHAN (1916)
I. L. R. 41 Bom. 27

——— s. 317—*Exposure or abandonment of a child by a person having care of it—Person entrusted with a child for abandoning it has the care of it.* Accused No. 1 having given birth to an illegitimate child gave it to her sister, accused No. 2, with a view to dispose of it secretly. Accused No. 2 accordingly carried it by a railway train and abandoned it in a second class compartment. On these facts, accused No. 2 was charged with an offence under s. 317 of the Indian Penal Code; and accused No. 1 with having abetted the offence under ss. 317 and 109 of the Code. The Sessions Judge acquitted them both, the accused No. 2 on the ground that she had not the care of the child, and accused No. 1 on the ground that as no principal offence had been committed she would not be guilty of abetment. The Government having appealed: *Held*, reversing the order of acquittal, that both the accused had committed the offences with which they had been charged. EMPEROR *v.* CRIPPS (1916)
I. L. R. 41 Bom. 152

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— s. 317—*concld.*

——— ss. 379, 447—

See THEFT . . **I. L. R. 44 Calc. 66**

——— s. 420—

See EVIDENCE ACT (I OF 1872), SS. 11, 14, 15 . . **I. L. R. 39 All. 273**

——— s. 441—*Criminal trespass—Building on another man's land.* A man may be guilty of criminal trespass on the land of another without ever personally setting foot on the land, if, for example, he causes others to build on the land against the wishes and in spite of the protest of the owner of the land. EMPEROR *v.* GHASI (1917)
I. L. R. 39 All. 722

——— ss. 456, 457, 380—

See LURKING HOUSE-TRESPASS.
I. L. R. 44 Calc. 358

——— ss. 478, 482—*"Trademark"—Importer using a distinctive mark has property in it as against the rest of the world.* A distinctive mark may be adopted by a person who is not the manufacturer but the importer of goods, and he will acquire the property in that mark as indicating that all goods which bear it have been imported by him. *Ralli* v. *Fleming, I. L. R. 3 Calc. 417*, and *Lavergne* v. *Hooper, I. L. R. 8 Mad. 149*, referred to. In this case merchants, selectors and importers of hand-made sugar, used a distinctive mark denoting that the sugar contained in the bags so marked had been selected and imported by them, and their customers accepted the mark as a guarantee that the sugar was hand-made. *Held*, that the mark so used was a "trade-mark" as defined in s. 478 of the Indian Penal Code. EMPEROR *v.* LATIF (1916) **I. L. R. 39 All. 123**

——— s. 504—*Insult intended to provoke breach of the peace—Necessary elements constituting offence—S. 95, act causing harm so slight that no person of ordinary sense and temper would complain of such harm.* A Deputy Magistrate went to a locality to enquire into a petition made by the residents for funds to enable them to dig a well and in the course of a discussion with the people assembled the Deputy Magistrate remarked that as some of the residents were well-to-do, they must make the well themselves, whereupon the accused who were present there said to the Deputy Magistrate. "Then why do you make an enquiry, go away quietly." The accused were convicted under s. 504, Indian Penal Code: *Held*, that the ingre-

PENAL CODE (ACT XLV OF 1860)—*concld.*

——— s. 504—*concld.*

dients essential for a conviction under s. 504 are threefold, *first*, intentional insult, *secondly*, provocation therefrom, and *thirdly*, intention that such provocation should cause or knowledge that such provocation was likely to cause the person so insulted to break the public peace or to commit any other offence: *Held*, on a consideration of the circumstances of the case that it was completely covered by the salutary provisions of s. 95, Indian Penal Code. JOY KRISHNA SAMANTA *v.* KING-EMPEROR (1916) . . **21 C. W. N. 95**

PENAL STATUTES.

——— generally not retrospective—

See TRADING WITH THE ENEMY.
I. L. R. 40 Mad. 34

PENALTY.

See THEATRICAL PERFORMANCE.
I. L. R. 44 Calc. 1025

——— *Interest, exorbitant rate of—Inference by Court—Court's power to reduce rate of interest—Mortgage—Release of one joint mortgagor, effect of—Contract Act (IX of 1872), ss. 44, 74.* It is competent to a Court to grant relief whenever the stipulation for payment of interest at a specified rate appears to the Court to be a stipulation by way of penalty. What constitutes a stipulation by way of penalty must be determined in each individual case upon its own special circumstances. *Webster* v. *Bosanquet*, [*1912*] *A. C. 394, Khagaram Das* v. *Ramsankar Das Pramanik, I. L. R. 42 Calc. 652, Bouwang Raja Chellaphroo Chowdhuri* v. *Banga Behari Sen, 20 C. W. N. 408, Abdul Majeed* v *Khirode Chandra Pal, I. L. R. 42 Calc. 690,* and *Gopeshwar Saha* v. *Jadav Chandra Chanda, I. L. R. 43 Calc. 632,* referred to. *Per* SANDERSON, *C. J.* The release of one of several joint mortgagors with no express reservation of the mortgagee's remedy against the other mortgagors, does not *ipso facto* release the other mortgagors. KRISHNA CHARAN BARMAN *v.* SANAT KUMAR DAS (1016)
I. L. R. 44 Calc. 162

PENSIONS ACT (XXIII OF 1871).

——— s. 4—

See SARANJAM . **I. L. R. 41 Bom. 408**

PERMANENT HEREDITARY TENURE.

See MINERALS, RIGHTS OF GRANTEE TO.
I. L. R. 44 Calc. 585

PERMANENT LEASE.

——— power of head of mutt to grant—

See HINDU LAW—ENDOWMENT.
I L. R. 40 Mad. 745

PERMANENT SETTLEMENT.

See IRRIGATION CESS ACT (MAD. ACT VII OF 1865), S. 1 AND PROS. 1, 2.
I. L. R. 40 Mad. 886

See MADRAS IRRIGATION CESS.
L. R. 44 I. A. 166

PERMANENT SETTLEMENT, 1793.

See CHAUKIDARI CHAKARAN LANDS.
I. L. R. 44 Calc. 841

PETITION.

——— delay in filing— .

See DIVORCE ACT (IV OF 1869), S. 14.
I. L. R. 41 Bom. 36

PLAINT.

——— amendment of—

See COURT-FEE . **I. L. R. 44 Calc. 352**

——— authority to file—

See PRACTICE . **I. L. R. 39 All. 343**

——— rejection of—

See COURT-FEE . **I. L. R. 44 Calc. 352**

See JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850), S. 1.
I. L. R. 39 All. 516

PLAINTIFFS.

——— death of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 **I. L. R. 40 Mad. 110**

PLEADER.

——— *Admission of women as pleaders—Disqualification—Constant Tradition—Regulation of 1781 for the Administration of Justice—Regulation VII of 1793 (Vakils), Preamble—Regulation XXVII of 1814 (Vakils), Preamble, ss. 4, 5, 10 to 14, 18, 20 to 22, 30, 35, 37—Legal Practitioners Act (I of 1846), ss. 4, 12—Pleaders of Lower Provinces Act (XVIII of 1852)—Legal Practitioners Act (XX of 1853)—Calcutta University Act (II of 1857)—Penal Code (XLV of 1860), s. 8—Succession Act (X of 1865), s. 3—Mofussil Small Cause Courts Act (XI of 1865), s. 1—Pleaders, Mukhtears and Revenue Agents Act (XX of 1865), ss. 2, 5, Sch. II—The Punjab Chief Courts Act (XXIII of 1865), s. 1—Pleaders, Mukhtears and Revenue Agents Act (XXIII of 1865), s. 1—Pleaders Amending Act (XXIX of 1865)—General Clauses Act (I of 1868), s. 2 (2)—Legal Practitioners Act (XVIII of 1879), s. 6, High Court Rules thereunder—General Clauses Act (X of 1897), s. 13.* As the law now stands, women are not entitled to be enrolled as pleaders of Courts subordinate to the High Court. The Rules of the High Court were made in accordance with, and for the purpose of carrying out, the intention of the Legal Practitioners Act, 1879, and are not *ultra vires*. *Per* MOOKERJEE, *J.* It is improper to give an extended construction of a statute, in the absence of an intention on the part of the Legislature, to reverse the established policy or to introduce a fundamental change in long established principles of law. Where it appears that a change of such a policy is desirable, the proper remedy is legislation and not an alteration of the law in the disguise of judicial exposition of the existing law. Case law on the subject referred to. *Per* CHITTY, *J.* In framing rules under an Act of the Legislature, the Court should not use any particular expression or word in a different sense to that applied to the particular expression or word by the Act itself. But it is doubtful whether the General Clauses Act applies to rules framed by the High Court under the Legal Practitioners Act, 1879. REGINA GUHA, *In re* (1916).
I. L. R. 44 Calc. 290

PLEADERS, MUKHTEARS AND REVENUE AGENTS ACT (XX OF 1865).

See PLEADER . **I. L. R. 44 Calc. 290**

PLEADERS OF LOWER PROVINCES ACT (XVIII OF 1852).

See PLEADER . **I. L. R. 44 Calc. 290**

PLEADINGS.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. VIII, RR. 3, 4, 5.
I. L. R. 41 Bom. 89

POLICE.

——— **powers of—**

See POLICE ACT (V OF 1861), SS. 31, 32.
I. L. R. 39 All. 131

POLICE ACT (V OF 1861).

——— **ss. 31, 32**—*Jatrawals—Competence of police to issue general order for the control of the business of Jatrawals. Held,* that it is not competent to a Superintendent of Police to issue a general order forbidding persons of a certain class to frequent certain specified places without having first obtained a licence. EMPEROR *v.* KRISHNA LAL (1916) . . **I. L. R. 39 All. 131**

POLICE ACT (BOM. IV OF 1890).

——— **ss. 63 (b), 80 (3)—**

See BOMBAY DISTRICT POLICE ACT (BOM. ACT IV OF 1890), SS. 63(*b*), 80(*3*).
I. L. R. 41 Bom. 737

POLICE DIARY.

See PRIVY COUNCIL, PRACTICE OF.
I. L. R. 44 Calc. 876

POLICE OFFICER.

——— **duties of—**

See HABEAS CORPUS.
I. L. R. 44 Calc. 76.

POSSESSION.

See CONSCIOUS POSSESSION.

See COUNTERFEIT COIN.
I. L. R. 44 Calc. 477

——— **change of—**

See PRE-EMPTION.
I. L. R. 44 Calc. 675

——— **delivery of, in execution—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 47, O. XXI, RR. 100, 101.
I. L. R. 40 Mad. 964

1. ——— *Of land suit for recovery of, by purchaser at sale—Defendant, if can set up occupancy right after suffering it by conduct to merge in tenure right.* The plaintiffs brought a suit in 1909 to recover possession of land purchased at a sale in execution of a decree in 1893. After the sale the land remained vacant for ten years from 1895 and the defendants took possession in 1905. The plaintiffs' case was that the defendants were in occupation after the sale without any right or title; the defence was that the plaintiffs purchased their right as tenure-holders only and the defendants had also the occupancy right: *Held,* the defendants not having kept alive and distinct the two interests which they possessed but having by conduct treated the occupancy right as no longer existent, could not turn round and set up the latter right to the detriment of the execution purchaser., That the plaintiffs' cause of action dated back to 1905 when the defendants took possession and the suit was not barred by limitation. PROMOTHA NATH ROY *v.* KISHORE LAL SHAHA (1916) . . . . **21 C. W. N. 304**

POSSESSION—*concld.*

2. ——— *Suit for recovery of, judgment of reversal by Appellate Court on ground of limitation, necessary findings in—Entry in record-of-rights, presumption of possession arising from—Onus on defendant to prove plaintiffs' dispossession—Judgment of Criminal Court in proceeding under s. 145, Cr. P. C., evidentiary value of—Statement of witnesses examined before Criminal Court but not in the suit, if admissible—Previous statements in the Criminal Court of witnesses examined in the suit, proper use of—Decision of Appellate Court as to admissibility of a document solely on opinion of the Criminal Court in s. 145 proceeding, propriety of.* The plaintiff sued for declaration of his title and recovery of possession. In a record-of rights published in 1896 the plaintiff was recorded as an occupancy raiyat of the land in suit. By an order of the Magistrate under s. 145, Cr. P. C., dated the 27th September 1909, the defendants were declared to be in possession thereof. The plaintiff's case was that he was dispossessed on the 12th December 1909. The suit was brought on the 19th March 1910. The Munsif decreed the plaintiff's suit finding that he had been in possession within 12 years of the date of the suit. The District Judge in appeal without finding the date of the plaintiff's dispossession held that the suit was barred by limitation: *Held,* that it was necessary for the District Judge to find when the plaintiff was dispossessed. He must also clearly find under what law the plaintiff's suit was barred and whether the facts necessary for applying that law have been established. That in a suit for ejectment the plaintiff has to prove his possession within the statutory period but in the present case the record-of-rights raised a presumption in the plaintiff's favour and shifted the onus on the defendants to establish affirmatively that the plaintiff has been out of possession for more than the statutory period. That although the judgment of the Criminal Court in the case under s. 145, Cr. P. C., was evidence of possession, the statements of witnesses who were not examined in the present suit were wholly inadmissible. That if it was sought to use the previous statements of such witnesses as were examined in the present suit, then those statements must first be put to the witnesses and duly proved before they could be treated as evidence. BARKAT ALI *v.* BASANT NUNIA (1915).
21 C. W. N. 175

POWER-OF-ATTORNEY.

——— *Construction—Whether special or general—Agent's authorisation extending to all acts for one particular purpose—Civil Procedure Code (Act V of 1908), O. III, r. 2 (a), High Court Rule III under s. 122 of the Civil Procedure Code (Act V of 1908).* A power-of-attorney was issued in plaintiff's favour in the following terms: "Accordingly, I have become owner of the said mortgage bond. Out of the principal and interest due to me in respect of the said mortgage bond, nothing has been paid to me. As the time in respect of it is about to expire, and it is necessary for me to go to my native place, I have constituted and appointed the abovenamed person my true and lawful attorney in this matter to recover all moneys due to me in respect of the principal and interest of the aforesaid mortgage bond by suing on my behalf in a civil Court or by coming to an amicable settlement, and to pass receipts for me, and on my behalf to sue

POWER-OF-ATTORNEY—*concld.*

and to receive process, and to do all such acts in this one matter as I, if present, would have done, or could have done or would have been permitted to do or would have been called upon to do." The question being raised whether the power-of-attorney was a general power-of-attorney within the meaning of R. III of the rules made by the High Court under s. 122 of the Civil Procedure Code, 1908, or a special power-of-attorney: *Held*, that the power was a special power-of-attorney, inasmuch as the agent's authorisation extended not to any class of business or employment, but was restricted to the doing of all necessary acts in the accomplishment of one particular purpose. *Charles Palmer* v. *Sorabji Jamshedji*, *(1886) P. J. 63*, applied. *Venkataramana Iyer* v. *Narasinga Rao*, *I. L. R. 38 Mad. 134*, not followed. VARDAJI KASTURJI *v.* CHANDRAPPA (1916) . . . **I. L. R. 41 Bom. 40**

PRACTICE.

See ACQUITTAL.
I. L. R. 44 Calc. 703

See ADMINISTRATION SUIT.
I. L. R. 44 Calc. 890

See BARRISTER **I. L. R. 44 Calc. 741**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. VIII, RR. 3, 4, 5.
I. L. R. 41 Bom. 89

See COMPANIES ACT (VII OF 1913), S. 38.
I. L. R. 41 Bom. 76

See CRIMINAL PROCEDURE CODE, S. 476.
I. L. R. 39 All. 367

See DECREE . **I. L. R. 44 Calc. 627**

See EXECUTION OF DECREE.
I. L. R. 44 Calc. 1072

See HABEAS CORPUS.
I. L. R. 44 Calc. 76

See INSOLVENCY **I. L. R. 44 Calc. 286**

See JURY, TRIAL BY.
I. L. R. 44 Calc. 723

See LOCAL INVESTIGATION.
I. L. R. 44 Calc. 711

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 816

See WIFE'S COSTS.
I. L. R. 44 Calc. 35

See WITHDRAWAL OF SUIT.
I. L. R. 44 Calc. 454

1.——————*Partition suit—Parties—Review—Civil Procedure Code (Act V of 1908), s. 152, O. XLVII, r. 1.—Partition of undivided share—Fraudulent representation.* Where the mortgagees of the plaintiff's share in a partition suit applied (*i*) to be added as parties to the suit, and (*ii*) for revocation of an order made by another Judge directing a sale of the one-fourth share of certain premises which is one of the properties to be partitioned in the suit on the ground that the conduct of the mortgagors and their attorneys was fraudulent and that the said order was made without jurisdiction: *Held*, that one Judge cannot set aside an order made by another Judge, even though the order be wrong. The remedy lies in review on the ground set out in O. XLVII, r. 1. *Sharup Chand Mala* v. *Pat*

PRACTICE—*concld.*

Dassee, I. L. R. 14 Calc. 627, Jatra Mohun Sen v. *Aukhil Chandra Chowdhury, I. L. R. 24 Calc. 334*, referred to. BASANTA KUMAR DAS *v.* KUSUM KUMARI DASI (1916) . **I. L. R. 44 Calc. 28**

2.——————*Suit filed by an agent on behalf of an absent plaintiff—Objection raised as to authority of agent—Duty of Court in which plaint is presented.* In the case of a suit filed by an agent on behalf of an absent plaintiff, where the authority of the plaintiff to have a suit brought at all and to allow his name to be used as a plaintiff in the case, is seriously questioned, that is a matter of principle which it is a Court's duty to decide; and unless it is shown that the plaintiff has in fact authorized the suit, either expressly or impliedly, a Court ought not to grant a decree in his favour. But where authority has been given by the plaintiff in some form or another, and the question is whether the agent has complied with the rules as laid down in the Code of Civil Procedure, that is not a question of principle at all, but a question of practice and procedure. It is the first Court's business to see that the rules are complied with and it should not leave the investigation of that question to the Appellate Court. But a suit should not be dismissed without the party who has failed to comply with the rules of procedure being given an opportunity of correcting the defect in procedure, if there be any. RAMAN LALJI *v.* GOKUL NATHJI (1917).
I. L. R. 39 All. 343

PRE-EMPTION.

	COL.
1. CUSTOM	234
2. FORMALITIES	234
3. POSSESSION	235
4. RIGHT OF PRE-EMPTION . . .	235

See MAHOMEDAN LAW—PRE-EMPTION.

1. CUSTOM.

1.——————*Custom—Effect on pre-existing custom of village coming to be owned by a single individual.* When a mahal in respect of which there exists a custom of pre-emption comes into the ownership of a single individual, the effect is to put an end to the custom, and not merely that the custom falls into abeyance. KAMR-UN-NISSA BIBI *v.* SUGHRA BIBI (1917).
I. L. R. 39 All. 480

2.——————*Wajib-ul-arz—Custom—Property to be offered first to a co-sharer.* In a pre-emption suit, the custom being that a co-sharer wishing to sell his property should first offer it to the other co-sharers, if the vendor goes to the other co-sharers and informs them of his desire to sell, and they decline to purchase on the ground that they have not the means or on any other similar ground, the vendor is at liberty, without violating the custom, to sell to a stranger. If, however, a co-sharer offers to purchase at a particular value the vendor ought not to sell to a stranger at a lower price. NAUNIHAL SINGH *v.* RAM RATAN (1916) . **I. L. R. 39 All. 127**

2. FORMALITIES.

——————*Mahomedan law—Talab-i-ishtishhad and talab-i-muwasbat—Obser-*

PRE-EMPTION—*contd.*

2. FORMALITIES—*concld.*

vance of both talabs *necessary. Held,* that the performance of the *talab-i-ishtishhad* is an indispensible preliminary to the enforcement of a right of pre-emption according to the Mahomedan Law. MUHAMMAD AHMAD SAID KHAN *v.* MADHO PRASAD (1916) . . . **I. L. R. 39 All. 133**

3. POSSESSION.

——— *Decree for pre-emption —Purchaser's possession and right to rents and profits continues until full pre-emption price is paid—Civil Procedure Code, 1882, s. 214—Mahomedan law of pre-emption—Change of possession under decree.* If a claim to pre-emption be disputed, and a suit must be brought, the rights of the parties are regulated by s. 214 of the Code of Civil Procedure, which in this respect embodies the principle of the Mahomedan Law. That section enacts that "When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid the suit shall stand dismissed with costs." It is therefore only on payment of the purchase-money on the specified date that the plaintiff obtains possession of the property, and until that time the original vendee retains possession, and is entitled to the rents and profits. *Deokinandan* v. *Sri Ram, I. L. R. 12 All. 234,* approved. In the present case the decree under which possession was given to the pre-emptor (appellant) was made on 31st March, 1900 by the Subordinate Judge who found that the pre-emptive price was Rs. 37,000, and on payment of that sum the pre-emptor was put into possession. The High Court reversed that decree and dismissed the suit, but found that the price was Rs. 44,850 as stated in the deed of sale. On 2nd July, 1904, the original purchaser was put into possession. On 25th January 1908, the Privy Council set aside the decree of the High Court and restored that of the Subordinate Judge except as to the pre-emptive price which was fixed as being Rs. 44,850, and the additional sum making up that amount having been deposited, possession was again given to the pre-emptor on 19th January, 1909. In proceedings in which each party claimed mesne profits from the other, the original vendee from the pre-emptor from 1900 to 1904, and the pre-emptor from the vendee from 1904 to 1909: *Held,* that the possession of the vendee continued until 19th January, 1909; and the pre-emptor only obtained possession within the meaning of s. 214 of the Civil Procedure Code, 1882, on the date. No mesne profits thereafter were due to him, but he was liable to the vendee for mesne profits from 1900 to 1904 for which period he was in possession without title. DEONANDAN PRASHAD SINGH *v.* RAMDHARI CHOWDHRI (1916) **I. L. R. 44 Calc. 675**

4. RIGHT OF PRE-EMPTION.

——— *Wajib-ul-arz—"Intiqal"—Mortgage by conditional sale—Cause of action.* The wajib-ul-arz of a village in recording an entry as to the right of pre-emption referred to transfers (*intiqal*) and provided for the mode in which the first offer was to be made: *Held,* that this provision applied to a mortgage by way of conditional sale and that the pre-emptor's cause of action arose upon the execution of the deed of mortgage and not when a foreclosure decree was passed or when the mortgagee obtained possession thereunder. SUBA SINGH *v.* MAHABIR SINGH (1917) . **I. L. R. 39 All. 544**

PRE-EMPTION—*concld.*

4. RIGHT OF PRE-EMPTION—*concld.*

PREJUDICE.

See LURKING HOUSE-TRESPASS.
I. L. R. 44 Calc. 358

PRELIMINARY POINT.

See CIVIL PROCEDURE CODE (1908), O. XLI, R. 23. **I. L. R. 39 All. 165**

PREROGATIVES.

See HABEAS CORPUS.
I. L. R. 44 Calc. 452

PRESIDENCY SMALL CAUSE COURT.

——— **suit in—**

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 816

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882).

——— **s. 38**—*Full Bench of the Small Causes Court, no power to decide facts. Held* by the Full Bench, that a Full Bench of the Presidency Small Cause Court, sitting under s. 38 of Act XV of 1882, has no jurisdiction to decide questions of fact whether they are raised generally or in consequence of its finding on another question of fact or law. *Sadasook Gambir Chund* v. *Kannayya, I. L. R. 19 Mad. 96* and *Srinivasa Charlu* v. *Balaji Rau, I. L. R. 21 Mad. 232,* approved. *Ramasamy Aiyar* v. *The Madras Times, Limited, 30 Mad. L. J. 207,* overruled. SAI SIKANDAR ROWTHER *v.* GHOUSEMOHIDIN MARAKAYAR (1916) **I. L. R. 40 Mad. 355**

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909).

——— **ss. 7, 36 and 90—11 and 12 Vict., cap. 21, s. 26**—*Immoveable property situate outside local limits of ordinary original civil jurisdiction of High Court—Dispute as to title—Jurisdiction of High Court in insolvency to decide—Summary procedure, when—Letters Patent, cl. 12 and 18—Bankruptcy Act (46 & 47 Vict., cap. 52 of 1883), s. 102.* Under s. 7 of the Presidency Towns Insolvency Act (III of 1909), the High Court of Madras in the exercise of its insolvency jurisdiction, has jurisdiction to adjudicate on claims relating to immoveable property situate outside the limits of its ordinary original civil jurisdiction; the jurisdiction which existed under s. 26 of 11 & 12 Vict., cap. 21, has not been cut down by the Presidency Towns Insolvency Act. The jurisdiction conferred by s. 7 of the Act is of a discretionary character, and it is seldom that the Insolvency Court will deem it expedient to try difficult questions of title; the Judge in such cases would ordinarily ask the Official As-

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*concld.*

——— **s. 7**—*concld.*

signee in Insolvency to establish his title in an ordinary Civil Court. S. 36 of the Act does not control the language of s. 7 but provides a special and summary procedure in certain cases; nor does s. 90 curtail the jurisdiction otherwise exercisable by the Insolvency Court. Decisions on the Bankruptcy Act (46 & 47 Vict., cap. 52 of 1883), section 102, corresponding to section 7 of the Indian Act III of 1909, are relevant and should be followed. Cl. 12 of the Letters Patent does not control the provisions of cl. 18 thereof so as to limit the insolvency jurisdiction of the Court. *Ex parte Dickin; In re Pollard, L. R. 8 Ch. D. 377, 378; Ex parte Brown; In re Yates, L. R. 11 Ch. D. 148,* followed. *Maule* v. *Davis; In re Motion, L. R. 9 Ch. App. 192, 210, In re Lucas, I. L. R. 42 Calc. 109, Ganeshdas Panalal; In re R. D. Sethna* v. *R. S. D., Chopra, I. L. R. 32 Bom. 198, Khan Sahib Banqi Abdul Kadhar Sahib* v. *The Official Assignee, 14 Mad. L. T. 51,* referred to. ABDUL KHADER *v.* THE OFFICIAL ASSIGNEE OF MADRAS (1916) . . **I. L. R. 40 Mad. 810**

——— **ss. 14, 15, 21, 38**—

See INSOLVENCY. **I. L. R. 44 Calc. 899**

——— **s. 18** (*3*)—*Suit on a promissory note against an adjudged insolvent—Proceedings against an insolvent may be stayed, although not pending at the time of the order of adjudication—Proceedings against an insolvent stayed, although leave to sue was obtained under s. 17—Discretion of the trial Court in staying proceedings not to be interfered with, where interference would involve abuse of judicial proceedings.* The wording of s. 18 (*3*) of the Presidency Towns Insolvency Act III of 1909 is wide enough to justify a stay of proceedings in an action which was not pending at the time of the order of adjudication. S. 10 of the English Bankruptcy Act, and *Brownscombe* v. *Fair, 58 L. T. 85,* referred to. MAHOMED HAJI ESSACK *v.* ABDUL RAHIMAN (1916) **I. L. R. 41 Bom. 312**

——— **ss. 33 to 37, 43**—

See INSOLVENCY. **I. L. R. 44 Calc. 374**

——— **s. 36**—

See INSOLVENCY **I. L. R. 44 Calc. 286**

——— **ss. 53** (*1*), **108, 109**—

See INSOLVENCY **I. L. R. 44 Calc. 1016**

PRESUMPTION.

See BENGAL TENANCY ACT (VIII OF 1885), S. 5, CL. (*5*). **I. L. R. 44 Calc. 555**

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890).

——— **s. 3, cl. (b)**—*Cruelty to animals—Cranes having their eyes sealed up—Carriage by railway in that condition.* The accused purchased at Indore certain cranes (*saras*) which had their eyes sealed up. He was carrying them in that condition by rail from Indore to Kolhapur. At Poona, an intermediate station, it was found that the birds' eyes were bleeding from the stitches. He was therefore convicted of an offence punishable under s. 3, cl. (*b*) of the Prevention of Cruelty to Animals Act, 1890: *Held,* that the accused had committed no offence under the section, for

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890)—*concld.*

——— **s. 3**—*concld.*

the cruelty, if any, was caused by the antecedent stitching up of the eyes and not by the manner or position in which the birds were carried in the train. EMPEROR *v.* IBRAHIM MEER SHIKARI (1917). **I. L. R. 41 Bom. 654**

PREVIOUS CONVICTION.

See CRIMINAL PROCEDURE CODE S. 413. **I. L. R. 39 All. 293**

PREVIOUS CONVICTION, PROOF OF.

——— A finger-mark expert was called as a witness who compared certain finger prints of the accused taken in Court with some other finger prints on a paper which contained a record of certain convictions which purported to be the convictions of the accused and pronounced them to be similar. This was taken as proof of the previous convictions of the accused: *Held,* that the previous convictions were not properly proved. RAM DAS SINGH *v.* KING-EMPEROR (1916) . **21 C. W. N. 469**

PRINCIPAL AND AGENT.

See ACCOUNTS, SUIT FOR. **I. L. R. 44 Calc. 1**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 115 . **I. L. R. 38 All. 81**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 116 . **I. L. R. 39 All. 355**

PRINCIPAL AND SURETY.

——— *Promissory note, payable on demand—Limitation—Payment of interest by principal—Acknowledgment of debt—Liability of surety—Contract of guarantee—Limitation Act (IX of 1908), ss. 18, 20, 21; Sch. I, Arts. 65, 73, 115—Contract Act (IX of 1872), ss. 126, 128.* Where an *on demand* promissory note was executed by the debtor and bore an endorsement on it "repayment guaranteed by me," signed by the person purporting to make the guarantee and where the said promissory note was unaccompanied by any writing, restraining or postponing the right to sue: *Held,* that the endorsement must be treated as a contract of guarantee by the person purporting to make the guarantee: *Held,* also, that the promissory note was a present debt payable without demand, that the liability of the surety on the guarantee accrued from the date of the promissory note, that the Statute of Limitation began to run in favour of the surety from the date of the note, and that for the purposes of this case it mattered not whether Art. 65 or Art. 115 of the Limitation Act applied. *Norton* v. *Ellam, 2 M. & W. 461, Rowe* v. *Young, 2 Brod. & Bing.* 165, *Maltby* v. *Murrells, 5 H. & N. 812, In re George, 44 Ch. D. 627, Perumal Ayyan* v. *Alagirisami Bhagavathar, I. L. R. 20 Mad. 245, Holl* v. *Hadley, 2 Ad. & El. 758, Colvin* v. *Buckle, 8 M. & W. 680, Srinath Roy* v. *Peary Mohan Mookerjee, 25 C. L. J. 91,* and *Dwarka Dass Govardhana Doss* v. *Chirakala Krishnaiya, 21 Mad. L. J. 457,* referred to. Where payment of interest on an *on demand* promissory note was made by the principal debtor with the knowledge and consent of the surety and even at his request, but where there was no evidence that it was made on behalf of such surety: *Held,* that the fresh

PRINCIPAL AND SURETY—*concld.*

period of limitation created under s. 20 of the Limitation Act by the payment of interest by the principal debtor could be only in respect of the debt upon which the interest was paid, *viz.*, the debt of the principal debtor. The fact that the interest was paid with the knowledge and consent of the surety and even at his request made no difference, unless the circumstances could be said to render the payment one on behalf of the surety. *Domi Lal Sahu* v. *Roshan Dobay*, *I. L. R. 33 Calc. 1278*, *In re Powers*, *Lindsell* v. *Phillips*, *30 Ch. D. 291*, *In re Frisby*, *43 Ch. D. 106*, *Lewin* v. *Wilson*, *11 App. Cas. 639*, distinguished. *Krishto Kishori Chowdhrani* v. *Radha-Romun Munshi*, *I. L. R. 12 Calc. 330*, *Hajarimal* v. *Krishnarav*, *I. L. R. 5 Bom. 647*, *Coope* v. *Creswell*, *L. R. 2 Eq. 106*, *Morgan* v. *Rowlands L. R. 7 Q. B. 493*, *Green* v. *Humphreys*, *26 Ch. D. 474*, *In re Boswell*, [*1916*] *2 Ch. 359*, *Astbury* v *Astbury*, [*1898*] *2 Ch. 111*, *In re The Estate of William Seager*, *3 Jur. N. S. 481*; *26 L. J. Ch. 809*, and *Gardner* v. *Brooke*, *2 I. R. 6*, referred to. *Per* MOOKERJEE, *J.* Though the liabilities of the debtor and the surety arise out of the same transaction, the liabilities of the two persons are distinct for the purposes of the application of s. 20 of the Limitation Act. *Gopal Daji Sathe* v. *Gopal bin Sonu Bait*, *I. L. R. 28 Bom. 248*, and *Srinivasa Varadachariar* v. *Echammal*, *21 Mad. L. J. 455*, followed. The surety, under the terms of the contract, is either jointly or separately liable, along with the principal debtor; if the debts are deemed joint, s. 21 (*2*) of the Limitation Act shows that the payment by one of them (the debtor) does not extend the time; on the other hand, if the debts are deemed distinct, the same result follows upon a true construction of s. 20 itself. S. 128 of the Contract Act, which makes the liability of the surety co-extensive with that of the principal debtor, is of no assistance to the plaintiff, as it must be read along with the provisions of the Limitation Act; it defines the measure of the liability and has no reference to the extinction of liability by operation of the Statute of Limitation. A payment by one person cannot keep alive the remedy against another, unless the circumstances are such that payment by the one may be regarded as a payment for the others. There is nothing in the relation of principal and surety itself which makes payment by the principal binding as a payment by the surety. *Cockrill* v. *Sparks*, *1 H. & C. 699*; *130 R. R. 739*, *Re Wolmerhausen*, *62 L. T. 541*, and *Henton* v. *Paddison*, *68 L. T. 405*, referred to. BRAJENDRA KISHORE ROY CHOWDHURY *v.* HINDUSTAN CO-OPERATIVE INSURANCE SOCIETY, LD. (1917).

I. L. R. 44 Calc. 978

PRIORITY.

See EXECUTION OF DECREE.

I. L. R. 44 Calc. 1072

PRIVILEGE.

See LIBEL . **I. L. R. 39 All. 561**

PRIVITY OF ESTATE.

——— **meaning of—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 108 (*j*).

I. L. R. 40 Mad. 1111

PRIVY COUNCIL, PRACTICE OF.

See HINDU LAW—ENDOWMENT.

I. L. R. 40 Mad. 709

PRIVY COUNCIL, PRACTICE OF—*contd.*

See MORTGAGE.

I. L. R. 44 Calc. 388

See SALE FOR ARREARS OF REVENUE.

I. L. R. 44 Calc. 573

——— *Appeal in criminal case —Conviction on charge of murder—Sentence of death, confirmation of, by Court of Appeal—Improper admission of evidence by Court of Appeal in treating entries in police diary as being evidence—Criminal Procedure Code (Act V of 1898), ss. 172, 374—Error said to vitiate confirmation of sentence.* According to the practice of the Judicial Committee in dealing with an appeal in a criminal case, the general principle is established that the Sovereign in Council does not act in the exercise of the prerogative right to review the Course of justice in criminal cases in the free fashion of a fully constituted Court of Criminal Appeal. The exercise of the prerogative takes place only where it is shown that injustice of a serious and substantial character has occurred. A mere mistake on the part of the Court below, as for example, in the admission of improper evidence, will not suffice if it has not led to injustice of a grave character. Nor do the Judicial Committee advise interference merely because they themselves would have taken a different view of evidence admitted. Such questions are, as a general rule, treated as being for the final decision of the Courts below. Under s. 172 of the Criminal Procedure Code (Act V of 1898), every police officer making an investigation is to enter his proceedings in a diary which may be used at the trial or inquiry, not as evidence in the case but to aid the Court in such inquiry or trial. And by s. 374 when the Court of Session passes sentence of death the proceedings are to be submitted to the High Court for confirmation. and the sentence is not to be executed unless it is confirmed by that Court. In this case which was one of murder the accused was convicted by the Sessions Judge and sentenced to death and that sentence was substantially in every material particular confirmed by the Court of the Judicial Commissioner (as the High Court) on appeal. After confirming the sentence, the High Court of Appeal took into consideration the police diary, made during the preparation of the case, for the purpose of testing the credibility of some of the witnesses for the defence, and treated the entries therein as being evidence in the case discrediting them. *Held*, by the Judicial Committee, that the Court was clearly wrong in so treating the entries in the police diary in a manner which was inconsistent with the provisions of s. 172 of the Criminal Procedure Code. *Queen-Empress* v. *Mannu*, *I. L. R. 19 All. 390*, approved. But such improper admission of evidence was not a sufficient reason why their Lordships should recommend interference with the judgment and sentence. The conditions of the Code as to jurisdiction had been complied with; the Court of Appeal had before it evidence on which it placed reliance and on which it could properly have based its affirmance and confirmation of the conviction. An error in procedure may be of so grave a character as to warrant the interference of the Sovereign, as for instance, if it deprived an accused of a constitutional or statutory right to be tried by jury or by some particular tribunal; or it may have been carried to

PRIVY COUNCIL, PRACTICE OF—*concld.*

such an extent as to cause the outcome of the proceedings to be contrary to fundamental principles which justice requires to be observed. Even if their Lordships thought the accused guilty they would not hesitate to recommend the exercise of the prerogative, were such the case. But here the error consisted only in the fact that evidence had been improperly admitted which was not essential to a result which might have been come to wholly independently of it. Substantial justice had been done, and that being so, it would be contrary to the general practice to advise the Sovereign to interfere with the result. DAL SINGH *v.* KING-EMPEROR (1917).

I. L. R. 44 Calc. 876

PROBATE AND ADMINISTRATION ACT (V OF 1881).

———— *Executor, under a Hindu will, carrying on family business—Debts incurred therein—Creditor's remedy against executor personally Executor's right to indemnity—Executor, if sufficiently represents estate when his interest adverse to benificiary's—Minor represented by nominee of party having adverse interest.* An executor appointed under Act V of 1881, is in many respects in a different position from a Hindu widow succeeding to her husband's estate, a guardian of a minor, or a *shebait* of an idol. The executor who borrows money in the course of the administration for the purposes of the estate is personally responsible for the payment of such debts though he is entitled to be indemnified out of the estate for such borrowing, if he shows it was reasonably and properly made. This principle has been accepted by the Calcutta High Court as applicable to Hindu executors. The principle applies equally to borrowings by the executors in conducting a family business which in India is regarded as a heritable asset, and the executor is personally responsible for them, subject to his right of indemnity against the estate upon proof that the borrowing was in all respects proper and for the benefit of the estate. Where certain hundis sued on were rejected as being insufficiently stamped: *Held*, that the plaintiffs were entitled to sue for the consideration. Ordinarily speaking executors would fully represent the estate but not in a case where their personal interest as executors were diametrically opposed to those of the beneficiary and the estate. A minor represented as guardian by a nominee of a party whose interest is adverse to the minor's is not properly represented in the suit. SUDHIR CHANDRA DAS *v.* GOBINDA CHANDRA ROY (1917).

21 C. W. N. 1043

———— **s. 89—**

See MAHOMEDAN LAW—PRE-EMPTION.

I. L. R. 41 Bom. 636

PROCEDURE.

See ADMINISTRATION SUIT.

I. L. R. 44 Calc. 890

See CIVIL PROCEDURE CODE, 1908, SS. 47, 52 . **I. L. R. 39 All. 47**

See CIVIL PROCEDURE CODE, 1908, S. 151, O. IX, R. 13. **I. L. R. 39 All. 8**

See CIVIL PROCEDURE CODE (1908), O. IX, R. 13; O. XVII, R. 3.

I. L. R. 39 All. 143

PROCEDURE—*concld.*

See CIVIL PROCEDURE CODE (1908), O. XXI, RR. 92, 93.

I. L. R. 39 All. 114

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 8.

I. L. R. 39 All. 396

See CIVIL PROCEDURE CODE (1908), O. XLI, R. 21. **I. L. R. 39 All. 388**

See CRIMINAL PROCEDURE CODE (1898), S. 339 . . **I. L. R. 39 All. 306**

See EXECUTION OF DECREE.

I. L. R. 44 Calc. 1072

See HABEAS CORPUS.

I. L. R. 44 Calc. 76, 459

See LAND ACQUISITION ACT (I OF 1894), S. 9 . . **I. L. R. 39 All. 534**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 36 . **I. L. R. 39 All. 391**

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 816

See WASTE LANDS ACT, 1863, S. 18.

I. L. R. 44 Calc. 328

PROCESS OF COURT.

———— **abuse of—**

See INSOLVENCY **I. L. R. 44 Calc. 899**

PROCLAMATION.

———— **application for—**

See SALE FOR ARREARS OF RENT.

I. L. R. 44 Calc. 715

———— **dated 5th August 1914—**

See BILL OF EXCHANGE.

I. L. R. 41 Bom. 566

PROFESSIONAL MISCONDUCT.

1. ———— *Legal Practitioners Act (XVIII of 1879 as amended by Act XI of 1896), ss. 13, 14—Scope of s. 14—Contempt of Court—"Court" meaning of.* S. 14 of the Legal Practitioners Act is not limited in its application to cases covered by cl. (*a*) and (*b*) only, but covers cases of misconduct under all the clauses of s. 13. Misconduct in the presence of the Court which shows disrespect of its authority and which obstructs and has a tendency to interfere with the due administration of justice is contempt. The principle is not limited to misconduct in the actual presence of the Judge; the Court is deemed to be present in every part of the place set apart for its use and for the use of its officers, jurors, and witnesses and therefore misbehaviour in such places is misconduct in the presence of the Court. *In the matter of Purna Chunder Pal, I. L. R. 27 Calc. 1023, In the matter of Southekal Krishna Rao, I. L. R. 15 Calc. 152, Le Measurier* v. *Wajid Hossain, I. L. R. 29 Calc. 890, In the matter of Muhammad Abdul Hai, I. L. R. 29 All. 61, In the matter of the Second-grade Pleaders, I. L. R. 34 Mad. 29, In the matter of Gholab Khan, 7 B. L. R. 179, In the matter of Bajrangi Sahai, 15 C. W. N. 269, In the matter of Kali Prasanna Chowdhury, 11 C. L. J. 164, In the matter of Radha Charan Chakravarti, 4 C. L. J. 229, In the matter of an Advocate, a Vakil, a Pleader, and a Mukhtear, 4 C. L. J. 262, The District Judge of Kristna* v. *Hanumanulu, (1915) Mad. W. R. 1050, In the*

PROFESSIONAL MISCONDUCT—*concld.*

matter of Ganapathi Sastri, 19 Mad. L. J. 504, French v. *French, 1 Hogan 138, Rex* v. *Carroll, 1 Wilson 75, Roach* v. *Hall, 2 Atk. 469, Ex parte Burrows, 8 Ves. 535, Ex parte Jones, 13 Ves. 237, In Re Johnson, 20 Q. B. D. 68, Ex parte Wilton, 1 Dowling N. S. 805, Kirby* v. *Webb, 3 T. L. R. 763, Charlton's Case, 3 My. & Cr. 16, Helmore* v. *Smith, 35 Ch. 449*, referred to. RASIK LAL NAG, *In the matter of* (1916) **I. L. R. 44 Calc. 639**

2. ——————— *Letters Patent, cl. 10 —Vakil—Improper advice to client—Obtaining from client a nominal sale-deed for a low value—Misappropriation of client's property—Setting up false defence of ownership in a suit against him by the client for its recovery—Giving false evidence and suborning perjury.* A vakil was found guilty of: (*a*) improperly suggesting to a client, seeking his advice as to how to recover his properties from his adversary, the execution, in his (vakil's) own favour, of a nominal sale-deed thereof for a low value, (*b*) setting up after the execution of such a sale-deed, a title in himself, contrary to the terms of the agreement with the client, (*c*) setting up a false defence of his ownership, in a suit against him by the client for a cancellation of the sale-deed, (*d*) supporting the false defence by his own false evidence and (*e*) suborning perjured evidence in support of the same. Their Lordships held that the vakil was guilty of misconduct and suspended him under cl. 10 of the Letters Patent, from practice for a period of two years. *In the matter of a* VAKIL OF THE HIGH COURT (1916) . . **I. L. R. 40 Mad. 69**

PROMISSORY NOTE.

——————— **payable on demand—**

See PRINCIPAL AND SURETY.
I. L. R. 44 Calc. 978

——————— **payable to a person or order or bearer, illegality of—**

See PAPER CURRENCY ACT s. 526.
I. L. R. 40 Mad. 585

——————— *Promissory Note payable on demand—Liability of surety—Guaranteeing such note when arises. Held,* that the liability of the surety arose immediately on the execution of the guarantee and limitation ran from that date. SREENATH ROY *v.* PEARY MOHAN MUKHERJI (1896) . **21 C. W. N. 479**

PROTRACTION OF LITIGATION.

See GRANT . **I. L. R. 44 Calc. 585**

PROVINCIAL INSOLVENCY ACT (III OF 1907).

——————— **ss. 2 (c) and (g), 22, 46 and 52—** *Dismissal of insolvency petition by Official Receiver —Application to District Court to revise, under s. 22, whether an appeal.—Official Receiver, whether a Court—Appeal to High Court from order of District Court, maintainability of.* A District Judge transferred a petition of a debtor to be adjudged an insolvent to the Official Receiver. The petition was dismissed by the Receiver on the grounds that the debtor had no realizable assets, that he might be concealing his assets, ready cash and outstandings, that he was not likely eventually to get his discharge and that therefore the petition was an abuse of process of Court. On an application by the debtor under s. 22 of the Provincial Insolvency Act (III of

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

——————— **s. 2**—*concld.*

1907) the District Court confirmed the order: *Held,* that an appeal lay to the High Court under s. 46 of the Act, from the order of the High Court: *Held* further, that the Official Receiver is not a Court subordinate to the District Court within s. 46 (*1*) of the Act and that an application to the District Court under s. 22 of the Act to revise the order of the Official Receiver is not an "appeal" within s. 46: *Held,* also, that the order of dismissal was based on a misconception of the Insolvency Procedure and should be set aside. *Jeer Chetti* v. *Rangaswami Chetti, 22 Mad. L. J. 52*, followed. ALLA *v.* KUPPAI (1916) **I. L. R. 40 Mad. 752**

——————— **ss. 5, 6, 15, 16—**

See INSOLVENCY. **I. L. R. 44 Calc. 535**

——————— **ss. 16, 22**—*Mortgage of factory—Decree for sale—Appointment of receiver to get in profits for benefit to decree-holder—Insolvency of judgment-debtor—Profits appropriated by creditors of insolvent—Suit by mortgagee-decree-holder to recover profits.* One J. L., being the mortgagee of a cotton ginning factory, obtained a decree for sale on his mortgage, but, instead of the factory being sold in execution of this decree, a receiver was appointed for the period of one year by consent of the decree-holder. The receiver was to work the factory, receive the profits and hand them over to the decree-holder. Notwithstanding that no fresh order was passed by the executing court, the receiver remained in possession of the factory for more than two years. He received the profits, but in accordance with the local practice of the trade made them over to a certain association for the collection and distribution of the profits of cotton ginning factories. Meanwhile the mortgagor became insolvent, and creditors holding simple money decrees against him proceeded to attach the profits of the factory in the hands of the association, and the profits were divided rateably between these creditors. The mortgagee then sued to recover the profits of the factory earned whilst the receiver had been in charge, making defendants (i) the receiver originally appointed by the Court, (ii) the creditors of the insolvent mortgagor and (iii) the receiver in insolvency: *Held,* that the appointment of the original receiver having been made with the consent of the decree-holder and the judgment-debtor was not made without jurisdiction; that the profits of the factory for the year for which the receiver was appointed were assignable entirely to the satisfaction of the mortgage decree, and that the suit as against the receiver in insolvency was not barred by either s. 16 or s. 22 of the Provincial Insolvency Act, 1907. *In re Patts: Ex parte Taylor,* [*1893*] *1 Q. B. 648*, and *Croshaw* v. *Lyndhurst Ship Company,* [*1897*] *2 Ch. D. 154*, distinguished. JHUNKU LAL *v.* PIARI LAL (1916) **I. L. R. 39 All. 204**

——————— **ss. 16, 36, 43**—*Insolvent—Property of insolvent which does not vest in the receiver—Occupancy holding—House of agriculturist.* A person who was an agriculturist by occupation was adjudicated an insolvent. Shortly before his insolvency he had granted a lease of his occupancy holding. The zamindar was the principal creditor. The District Judge ordered the land to be sur-

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

——— **s. 16**—*concld.*

rendered to the zamindar and the insolvent's house to be sold: *Held*, that the property of the insolvent which is exempted by any enactment for the time being in force from liability to attachment and sale in execution of a decree does not vest in the Court or the receiver, therefore the District Judge had no jurisdiction to direct the receiver to surrender the tenancy and to set aside the lease. Further, the order directing the sale of the house was illegal inasmuch as the house being that of an agriculturist and being exempted from attachment and sale in execution of a decree, never vested in the Court or the receiver. SAGAR MAL *v.* RAO GIRRAJ SINGH (1916). **I. L. R. 39 All. 120**

——— **ss. 16, 41, 42, 45**—*Insolvent—Assets declared by receiver not realizable—Discharge of insolvent—Subsequent sale by insolvent of assets so declared unrealizable.* Part of the apparent assets of an insolvent consisted of mortgage rights in certain property. These rights were not dealt with by the receiver because he considered that it would be impossible to realize anything on them. The insolvent was accordingly discharged. Thereafter the insolvent managed to sell the mortgagee rights which has been declared unsaleable by the receiver: *Held*, that in the circumstances the sale was good and passed whatever rights the discharged insolvent had to the purchaser. SHEONANDAN *v.* KASHI (1916). **I. L. R. 39 All. 223**

——— **s. 18**—*Sale-deed executed benami by the insolvent—Receiver entitled to remove the so called purchasers from possession of properties, sold—Indian Limitation Act (IX of 1908) Sch. I, Art. 91.* Where insolvents, in order to save their property from their creditors, had executed fictitious sale-deeds thereof in favour of relations, but never gave, and never intended to give, the so-called purchasers possession: *Held*, that such transaction was no bar to the receiver taking possession of the property comprised in the said sale-deeds as the property of the insolvents. *Petherpermal Chetty* v. *Muniandy Servai, I. L. R. 35 Calc. 551*, referred to. JAGRUP SAHU *v.* RAMANAND SAHU (1917) **I. L. R. 39 All. 633**

——— **s. 22**—*Attachment of property as that of an insolvent—Decision of Insolvency Court as between rival claimants to property attached that the property belonged to one of the claimants—Suit by the other to recover possession—Res judicata.* *Held*, that the decision of an insolvency Court, as between two rival claimants to property attached by a receiver as the property of the insolvent, that the property belongs to one or the other claimant does not operate as *res judicata* in respect of a suit on title by one claimant against the other for the recovery of such property. HUKUMAT RAI *v.* PADAM NARAIN (1917). **I. L. R. 39 All. 353**

——— **ss. 22, 46**—

See CIVIL PROCEDURE CODE (1903), s. 11. **I. L. R. 39 All. 626**

——— "*Person aggrieved*"—*Right of appeal—Necessary parties.* *Held*, that one creditor out of the general body of creditors of an insolvent has no *locus standi* in an application in the Insolvency Court made against the estate of the insolvent, represented by the receiver, by a person claiming adversely to the insolvent's estate. He has, therefore, no right of appeal against the decision on such an application. *Ex parte Sidebotham, 14 Ch. D. 458*, and *Balli* v. *Nand Lal, 33 Indian Cases 773*, referred to. *Ketokey Churan Banerjee* v. *Sreemutty Sarat Kumari Debee, 20 C. W. N. 995*, distinguished, JHABBA LAL *v.* SHIB CHARAN DAS (1916). **I. L. R. 39 All. 152**

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

——— **s. 22**—*concld.*

——— **ss, 34, 35**—*Application for declaration of insolvency—Property of applicant attached—Power of Insolvency Court to stay proceedings in execution.* An Insolvency Court has no power to interfere with execution proceedings pending in another Court against a person who has filed his petition to be declared insolvent, at least, until either the debtor has been declared insolvent or until a receiver has been appointed. ANUP KUMAR *v.* KESHO DAS (1917). **I. L. R. 39 All. 547**

——— **s. 36**—

1. ——— *Insolvent—Transfer of property by insolvent—Validity of such transfer.* S. 36 of the Provincial Insolvency Act is wider in its scope than s. 53 of the Transfer of Property Act. Under the former Act it is not necessary to show that the transfer was made with intent to defeat or delay a creditor. All that it is necessary to show is that the transfer was made within two years of the adjudication of the insolvency of the debtor, unless it is a transfer made before and in consideration of marriage. In order to determine the validity of a transfer by a debtor of all his property in lieu of a debt it is a matter for consideration whether a real transfer was intended by the transferee, or it was merely fictitious, and whether it was made in good faith, the *onus* of proving good faith being upon the transferee. MUHAMMAD HABIB-ULLAH *v.* MUSHTAQ HUSAIN (1916) . . . **I. L. R. 39 All. 95**

2. ——— *Insolvency—Procedure—Application by receiver to have annulled a transfer made by the insolvent.* Where a receiver in insolvency seeks to have set aside, under the provisions of s. 36 of the Provincial Insolvency Act, 1907, a transfer made by the insolvent, he should file a written statement (similar to a plaint in ordinary suits) setting forth the grounds on which the transfer is challenged; the transferee should put in a written reply, and the proceeding should continue very much as in a suit. Such matters should not and cannot properly be disposed of in a summary manner. CHUNNOO LAL *v.* LACHMAN SONAR (1917) **I. L. R. 39 All. 391**

——— **s. 37**—*Surety for debt of insolvent whether "creditor."* A person who stands surety for the payment of a debt by the insolvent is a creditor within the meaning of that expression in s. 37 of the Provincial Insolvency Act (III of 1907). *Nalam Viswanatham* v. *Official Assignee of Madras, 32 I. C. 795*, overruled. RODERIQUES *v.* RAMASWAMI CHETTIAR (1916). **I. L. R. 40 Mad. 783**

——— **s. 42**—*Adjudication, annulment of, if permissible on other than statutory grounds—Failure of receiver to pay debts—Consent of opposing creditor.* The Court has no power to annul

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

——— **s. 42**—*concld.*

an adjudication of insolvency otherwise than in exercise of the authority vested in it by the statute. Where therefore none of the circumstances mentioned in s. 42 of the Insolvency Act as grounds for annulment had been established, the order of the Court annulling adjudication on the petition of the insolvents was erroneous, and the fact that the Receiver of the insolvents' property had been unable to satisfy the debts was no ground for annulment. The fact that the opposing creditors was proved to have at one time consented to a composition was not sufficient to authorise the Court to annul an adjudication. The consent of all the creditors is not by itself sufficient to justify an order of annulment. The Court had to consider not merely that what they have agreed to is for the benefit of the creditors as a whole but also that the annulment would not be detrimental to commercial morality. *Quœre*: Whether under s. 42 of the Provincial Insolvency Act, the Court has discretion to refuse to annul an adjudication when the circumstances mentioned in sub-s. (*1*) to that section are established. MOTILAL *v.* GANAPATRAM (1915) . . . **21 C. W. N. 936**

——— **ss. 43 (*2*), 46**—*Creditor*—"*Person aggrieved*"—*Appeal.* One of the creditors of an insolvent, in whose case no receiver had been appointed, applied to the Court making allegations that the insolvent had been guilty of an offence under s. 43, sub-s. (*2*) of the Provincial Insolvency Act, 1907, the Court, however, held that no case was made out and refused to move in the matter: *Held*, that the creditor applicant was not a "person aggrieved" within the meaning of s. 46, sub-s. (*2*) of the Act, and had no right of appeal against the Court's order. *Iyappa Nainar* v. *Manikka Asari, 27 Indian Cases, 251*, referred to. LADU RAM *v.* MAHABIR PRASAD (1916) . . . **I. L. R. 39 All. 171**

——— **ss. 43 (*2*) (*b*) and 46 (*1*) and (*2*)**—*Creditor's petition to inquire into commission of an offence—Inquiry and refusal to frame a charge—Appeal, right of.* In the course of a proceeding in insolvency, a creditor filed a petition alleging the commission of an offence by the insolvent and asking the Court to take action against him under s. 43, cl. *2* (*b*) of the Provincial Insolvency Act (III of 1907). The Judge inquired into the petition but dismissed it, refusing to frame a charge: *Held*, that the creditor had no right of appeal as he is not a "person aggrieved" within the meaning of s. 46 of the Act. IYAPPA NAINAR *v.* MANIOKA ASARI (1914) **I. L. R. 40 Mad. 630**

——— **s. 47**—*Civil Procedure Code (1908), O. XXI, r. 71—Sale of property of insolvent by receiver—Default of purchaser—Re-sale—Order by Court on purchaser to make good deficiency—"Proceeding."* S. 47 of the Provincial Insolvency Act, 1907, has not the effect of making the provisions of O. XXI of the Code of Civil Procedure, 1908, applicable to a sale of the property of an insolvent held by a receiver under the orders of the District Judge. If, therefore, the purchaser at such a sale defaults and the property is resold for a sum less than the original bid, the first purchaser cannot be called upon under O. XXI, r. 71, to make good the deficiency. *Mul Chand* v.

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*concld.*

——— **s. 47**—*concld.*

Murari Lal, I. L. R. 36 All. 9, referred to. CHEDA LAL *v.* LACHMAN PRASAD (1916).
I. L. R. 39 All. 267

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).

——— **s. 17**—

See SMALL CAUSE COURT SUIT.
I. L. R. 44 Calc. 950

——— **ss. 32 to 35**—

See CIVIL PROCEDURE CODE (1908), s. 24 (*4*). **I. L. R. 39 All. 214**

——— **s. 35**—*Decree passed by Small Cause Court—Small Cause Court abolished and execution transferred to a Munsif—Jurisdiction—Appeal—Indian Limitation Act (IX of 1908), s. 19—Acknowledgment.* Where a Court of Small Causes had passed a decree and was then abolished and the execution proceedings were taken in the Court of a Munsif: *Held*, that the Munsif's orders in execution were not the orders of a Court of Small Causes and were therefore open to appeal. *Sarju Prasad* v. *Mahadeo Pande, I. L. R. 37 All. 450*, followed. *Mangal Sen* v. *Rup Chand, I. L. R. 13 All. 324*, dissented from. *Held*, also, that an objection filed in answer to an application for execution of decree by the arrest of the judgment-debtor, upon which a warrant of arrest had been issued, to the effect that the judgment-debtor was a poor man and that the warrant should not be executed, could not be construed into an acknowledgment of the decretal debt within the meaning of s. 19 of the Indian Limitation Act, 1908. *Ramhit Rai* v. *Satgur Rai, I. L. R. 3 All. 247*, distinguished. LACHMAN DAS *v.* AHMAD HASAN (1917).
I. L. R. 39 All. 357

——— **Sch. II, Art. 8**—*Suit for rent—Suit of a nature cognisable by the Court of Small Causes—Civil Procedure Code (Act V of 1908), s. 102—Second appeal.* A suit for rent for an amount less than Rs. 500 was filed in the Second Class Subordinate Judge's Court. By a Government Notification contemplated by Art. 8 of the Second Schedule of the Provincial Small Cause Courts Act, 1887, the Subordinate Judges of all districts in the Bombay Presidency proper were invested with authority to try on the Small Cause Side of their Courts all suits for the recovery of rent arising within the local limits of the ordinary jurisdiction of their Courts and falling within the pecuniary limits up to which suits are cognisable by them as Judges of Courts of Small Causes. Both the lower Courts decreed the claim. In the High Court a preliminary objection was taken that no second appeal lay on the ground that the suit in which it was preferred was of a nature cognisable by Courts of Small Causes within the meaning of s. 102 of Civil Procedure Code, 1908: *Held*, allowing the objection, that no second appeal lay. RAMKRISHNA YESHWANT *v.* THE PRESIDENT OF THE VENGURLA MUNICIPALITY (1916) . . . **I. L. R. 41 Bom. 367**

——— **Sch. II, Art. 35 (ii)**—*Suit for compensation for removal of trees and crops—Jurisdiction—Want of jurisdiction not urged in defence—Decree, if should be set aside on review—Objection, if may be waived.* A suit for compensation for a tree

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*concld.*

——— **Sch. II, Art. 35 (ii)**—*concld.*

alleged by plaintiff to have been grown by him and cut by the defendant and for crops of mustard raised by him and misappropriated by the defendant from land alleged to be plaintiff's property and in his possession is excluded from the jurisdiction of the Small Cause Court under the Art. 35, sub-cl. (2) of Sch. II of the Provincial Small Cause Courts Act. Where no objection to the Court's jurisdiction having been taken at the original trial, the suit was decreed and an application by the defendant for review was dismissed on the ground that the objection was not raised at the trial: *Held*, that the review application should have been granted, as where there is an entire absence of jurisdiction no action on the part of the plaintiff or inaction on the part of the defendant can invest the Court with jurisdiction. RAMPROSHAD PRAMANIK *v.* SRICHARAN MANDAL (1917) . . **21 C. W. N. 1109**

PUBLIC BODY.

See ELECTION . **I. L. R. 40 Mad. 941**

PUBLIC DRAIN.

——— *House drain—Title—Calcutta Municipal Act (Beng. III of 1899), ss. 3, cl. (16), 286, 337—Vesting of a street in a municipality—its effect—Rights of the owner.* The legal effect of the statutory vesting of a street in a municipality is not to transfer to the municipality the ownership in the site or soil over which the street exists. The effect of the statutory provision is merely to vest in them the property in the surface of the street, road or drain and in so much of the actual soil below and air above as may reasonably be required for its control, protection and maintenance as a highway or drain for the use of the public. The Court will not presume that the intention of the Legislature was to confiscate private property and vest it in a public corporation without compensation granted to the proprietor. The right of the owner was intended to be abridged only to the extent necessary for the discharge of the statutory duties imposed on the Corporation for the benefit of the public. The property of the local authority concerned does not extend further than is necessary for the maintenance and use of the highway as a highway; that, subject to this qualification, the original owner's rights and property remain, and that if the highway ceases to be a highway, the owner becomes entitled to full and unabridged rights of ownership in the property. *Sundaram Ayyar* v. *Municipal Council of Madura, I. L. R. 25 Mad. 635*, and *Madathapu Ramaya* v. *Secretary of State for India, I. L. R. 27 Mad. 386*, followed. *Chairman of the Naihati Municipality* v. *Kishori Lal Goswami, I. L. R. 13 Calc. 171, Modhu Sudan Kundu* v. *Promoda Nath Roy, I. L. R. 20 Calc. 732, Chairman of the Howrah Municipality* v. *Khetra Krishna Mitter, I. L. R. 33 Calc. 1290, Nihal Chand* v. *Azmat Ali, I. L. R. 7 All. 362, Nagar Valab Narsi* v. *The Municipality of Dhandhuka, I. L. R. 12 Bom. 490, The Municipal Commissioners of Madras* v. *Sarangapani Mudaliar, I. L. R. 19 Mad. 154, Sundaram Ayyar* v. *The Municipal Council of Madura, I. L. R. 25 Mad. 635, Madathapu Ramaya* v. *Secretary of State for India, I. L. R. 27 Mad. 386, The Mayor of Tunbridge Wells* v. *Baird, [1896] A. C. 434, Municipal Council of Sydney* v. *Young, [1898] A. C. 457, Finchley Electric Light Co.* v. *Finchley Urban Council, [1903] 1 Ch. 437, Foley's Charity Trustees* v. *Dudley Corporation, [1910] 1 K. B. 317, London and N. W. Ry. Co.* v. *Westminster Corporation, [1905] A. C. 426, Lodge Holes Colliery Co.* v. *Wednesbury Corporation, [1908] A. C. 323, Battersea Vestry* v. *County of London, [1899], 1 Ch. 474*, referred to. GUNENDRA MOHAN GHOSH *v.* CORPORATION OF CALCUTTA (1916). **I. L. R. 44 Calc. 689**

PUBLIC OFFICER.

——— **syndicate a—**

See SPECIFIC RELIEF ACT (I OF 1877), S. 45 . **I. L. R. 40 Mad. 125**

PUBLIC PATHWAY.

——— *Obstruction Proceedings against several without statement of particular acts of obstruction done by each—Initial and final orders, vague—No reasonable opportunity given to show cause and adduce evidence—Legality of order based on local inquiry or information at time of conditional order—Criminal Procedure Code (Act V of 1898), ss. 133, 137.* In a proceeding under s. 133 of the Criminal Procedure Code against several persons, alleging various acts of unlawful obstruction to a public way, the initial and final orders must state accurately the specific obstruction caused by each, and which he is required to remove, unless it is alleged that all of them are jointly responsible for all the obstructions complained of. An order under the section should not be vague, indefinite or ambiguous, but such as to afford information by its terms to the person to whom it is directed what he is to do in order to comply with it. *Kali Mohan Kar* v. *Nakari Chandra Das, 11 C. L. J. 114*, followed. It is desirable that responsible opportunity should be given the parties proceeded against under s. 133 to show cause under s. 135 (*b*) or adduce evidence under s. 137 (*1*). The report or other information on which the Magistrate has passed the conditional order under s. 133, is not evidence against the person to whom it is directed. *Srinath Roy* v. *Ainaddi Halder, I. L. R. 24 Calc. 395*, approved. An order under s. 133 cannot, even by consent of parties, be based on information gathered at a local inquiry. *Upendra Nath Mandal* v. *Rampal, 10 C. L. J. 482*, approved. RAIMOHAN KARMAKAR *v.* EMPEROR (1916) **I. L. R. 44 Calc. 61**

PUISNE MORTGAGE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 67 . **I. L. R. 40 Mad. 77**

PURCHASE.

See BENAMI PURCHASE.

PURCHASE MONEY.

See MORTGAGE. **I. L. R. 44 Calc. 542**

See RATEABLE DISTRIBUTION. **I. L. R. 44 Calc. 789**

PURCHASER.

——— **in puisne mortgagee's suit, right of—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 67 . **I. L. R. 40 Mad. 77**

PURCHASER—*concld.*

——— **rights of**—

See PRE-EMPTION.
I. L. R. 44 Calc. 675

PURCHASER IN EXECUTION.

——— **rights of**—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 67 . **I. L. R. 40 Mad. 77**

PUTNI.

——— **purchase of**—

See SALE FOR ARREARS OF RENT.
I. L. R. 44 Calc. 715

PUTNIDAR.

——— **right of**—

See CHAUKIDARI CHAKARAN LANDS.
I. L. R. 44 Calc. 841

——— *Part of rent payable by putnidar assigned for payment of revenue—Separate account opened by a co-sharer zemindar—Suit to apportion assigned rent and to order putnidar to pay plaintiff's share of same to plaintiff's account, if maintainable—Transfer of Property Act (IV of 1882), s. 37.* Where a *putnidar* as part of the consideration for the use and occupation of the land undertook to pay the revenue payable by the zemindar direct in the Collectorate on account and to the credit of the landlord: *Held*, that the revenue so paid by the *putnidar* was part of the rent paid to the landlord. The owners of a share in the zemindari having got a separate account opened in respect of their share under s. 10 of Act XI of 1859, sued the *putnidar* and his co-sharers for an apportionment as between the co-sharers of the revenue payable by the *putnidar*, and for an order directing the *putnidar* to make separate payment in the Collectorate to the account and credit of the plaintiffs of the amount due in respect of their share: *Held*, that upon the principle underlying s. 37 of the Transfer of Property Act and on the authority of *Sreenath Chunder v. Mohesh Chunder, 1 C. L. R. 453, Issur Chandra* v. *Ramkrishna, I. L. R. 5 Calc. 902*, and *Raj Narain Mitter* v. *Ekadasi Bag, I. L. R. 27 Calc. 479*: s. c. *4 C. W. N. 494*, the suit was maintainable and should be decreed, the objection of the *putnidars* that the apportionment would impair the value or affect the character of their permanent lease being groundless and the objection that at each of the four kists they would have to write two challans instead of one being frivolous. GOUR GOPAL SIHNA *v.* GOSTA BEHARY PRAMANIK (1916) . . . **21 C. W. N. 214**

Q

QUALITY-MARK.

See TRADE-NAME, INFRINGEMENT OF
I. L. R. 41 Bom. 49

QUARRIES.

——— **right of grantee to**—

See INAM . **I. L. R. 40 Mad. 268**

R

RAILWAY.

See EAST INDIAN RAILWAY.
21 C. W. N. 815

RAILWAY ADMINISTRATION.

See LOSS OF GOODS.
I. L. R. 44 Calc. 16

RAILWAY PASSENGER.

——— *Fraud—Travelling without a ticket but not with intent to defraud—Course open to Railway Administration in such case—Power to forcibly eject passenger—Assault—"Railway"—"Rolling stock"—Railways Act (IX of 1890), ss. 3 (4), (10), 68, 69, 113, 120, 122—Railways Act (IV of 1879), ss. 31 and 32—Enhancement of sentence on hearing of Reference.* The main and primary purpose of ss. 68 and 69 of the Railways Act (IX of 1890) is to prevent persons from travelling in fraud of the Company without payment of the fare, and the obligation to show their tickets, when required, is subsidiary only to such purpose. Travelling without a ticket, in the absence of intent to defraud, is not an offence. In such a case the only course open to the Railway Administration is that provided in s. 113. There is no provision in the Act for ejecting passengers except in certain circumstances such as are specified in s. 120. S. 122 does not apply to passengers travelling in a railway carriage, as the term "railway" in s. 3 (*4*) excludes a carriage. Where a person travelled without a ticket, not with intent to defraud but because he arrived as the train was about to start and was, therefore, unable to purchase one, and when asked for it by the travelling ticket checkers offered to pay the fare and excess charge on grant of a receipt, but refused to leave the compartment at the next station and purchase a ticket as he was directed to do by the ticket-checkers: *Held*, that the ticket-checkers had no lawful authority to remove him thereupon forcibly from the carriage and to beat him with their fists, and that they were guilty of an offence under s. 323 of the Penal Code. *Pratab Daji* v. *B., B. & C. I. Railway Co., I. L. R. 1 Bom. 52* distinguished. *Butler* v. *Manchester, Sheffield and Lincolnshire Railway Company, 21 Q. B. D. 207*, referred to. The Court cannot entertain an application for enhancement on the hearing of a reference under s. 438 of the Code. Such applications ought to be made in the usual way, and are not ordinarily entertained on behalf of private parties. MOHAMMED HOSAIN *v.* FARLEY (1916)
I. L. R. 44 Calc. 279

RAILWAYS ACT (IX OF 1890).

——— **ss. 3, 68, 69, 113, 120, 122—**

See RAILWAY PASSENGER.
I. L. R. 44 Calc. 279

——— **ss. 3 (*6*), 77, 140—**

See LOSS OF GOODS.
I. L. R. 44 Calc. 16

——— **as amended by Act IX of 1896—**

——— **s. 7**—*City of Bombay Municipal Act, 1888, s. 289—Laying Railway lines by Railway Administration across public street vested in Municipality—Land Acquisition Act (I of 1894), provisions of, inapplicable.* S. 7 of the Indian Railways Act, 1890 (as amended by Act IX of 1896), enacts:

RAILWAYS ACT (IX OF 1890)—*contd.*

——— s. 7—*concld.*

"(i) Subject to the provisions of this Act and, in the case of immovable property not belonging to the Railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes, and for companies . . . a Railway administration may, for the purpose of constructing a railway . . . . notwithstanding anything in any other enactment for the time being in force, make or construct in, upon, across, under or over any lands, or any streets . . . . lines of railway . . . . as the Railway administration thinks proper. (ii) The exercise of the powers conferred on a Railway administration by sub-s. (*1*) shall be subject to the control of the Governor-General in Council." The respondents constructed Railway lines across a street vested in, and under the control of, the appellants by virtue of the provisions of the City of Bombay Municipal Act, 1888. In a suit by the appellants for a declaration that the respondents were not legally entitled to lay lines of railway across such street without either obtaining their permission, or acquiring the street under the provisions of the Land Acquisition Act, 1894. *Held* (affirming the decision of the High Court on appeal dismissing the suit), that the taking the railway on the level across the street was not acquisition of immovable property within the meaning of s. 7 of the Indian Railways Act, 1890, as amended. The provisions of the Land Acquisition Act were not so expressed as to cut down the power conferred by that section on the respondents to carry a line of railway across a street subject to the control of their powers by the Governor-General; and that Act was inapplicable to such a case. MUNICIPAL CORPORATION OF CITY OF BOMBAY *v.* G. I. P. RAILWAY COMPANY (1916)
I. L. R. 41 Bom. 291

——— s. 72, sub-s. *1—Liability of Railway Administration for loss of goods delivered for carriage, the same as that of bailee—Indian Contract Act (Act IX of 1872), s. 151—Loss of goods delivered for carriage by act of God—Onus on Railway Administration to prove circumstances exonerating liability—Negligence co-operating with act of God.* The plaintiff sued for the recovery of the value of goods made over to the Eastern Bengal Railway Administration but not delivered at the destination. The defendant pleaded in substance that the goods were destroyed while in course of transmission by an act of God, namely, a severe cyclone: *Held*, that under sub-s. (*1*) of s. 72 of the Indian Railways Act, 1890, the responsibility of a Railway Administration for the loss or destruction of goods delivered to the Administration to be carried by Railway is, subject to the other provisions of the Act, that of a bailee under the Indian Contract Act. That the liability of the defendant must be measured solely by the test formulated in ss. 151 and 152 of the Indian Contract Act. That when goods have not been delivered to the consignees at the place of destination the plaintiff need not prove how the loss occurred, the burden lies upon the bailee to prove the existence of circumstances which exonerate him from liability for the loss. That the defendant having discharged this burden the plaintiff's claim failed. That there is no foundation for the contention that a Railway Administration when it accepts goods for transmission is in the position of insurers as common carriers. That even if there was negligence on the part of the Railway Administration, if the act of God was the proximate cause, the defendant Railway would not be liable. SURENDRO LAL CHOWDHURI *v.* SECRETARY OF STATE (1916)
21 C. W. N. 1125

RAILWAYS ACT (IX OF 1890)—*concld.*

——— s. 72—*concld.*

——— s. 77—*Notice to Manager—Agent, Eastern Bengal Railway, Manager thereof—Notice to Traffic Manager not sufficient.* The Agent of the Eastern Bengal Railway is the Manager within the meaning of the Railways Act and the notice required by s. 77 must be given to the Agent; service of notice on the Traffic Manager is not sufficient KALA CHAND SHAHA *v.* SECRETARY OF STATE (1917) . **21 C. W. N. 751**

RAJINAMA AND KABULIYAT.

See LAND REVENUE CODE (BOM V OF 1879), S. 74 **I. L. R. 41 Bom. 170**

See REGISTRATION ACT (XVI OF 1908), S. 17 . **I. L. R. 41 Bom. 510**

RATEABLE DISTRIBUTION.

See EXECUTION OF DECREE.
I. L. R. 44 Calc. 1072

——— *Civil Procedure Code (Act V of 1908) s. 73; O. XXI, r. 65—Policy underlying the section—Receipt of purchase-money by agent, effect of.* The policy, which underlies s. 73 of the Code of Civil Procedure, obviously is to fix the point of time when the entire body of persons entitled to claim rateable distribution should be finally ascertained; that point of time is the moment when the entire purchase-money has been paid by the purchasers. It is immaterial from this point of view whether the purchase-money has been actually paid into the Treasury or into the hands of a person employed by the Court to hold the sale. When a sale has been held by a Court in execution, under O. XXI, r. 65, receipt of purchase money by the agent is, for the purposes of s. 73, equivalent to receipt of assets by the Court. *Golam Hossein* v. *Fatima Begum, 16 C. W. N. 394, Maharaja of Burdwan* v. *Apurba Krishna Roy, 14 C. L. J. 50,* distinguished. *Huddersfield Banking Company, Ltd.* v. *Henry Lister & Son, Ltd., [1895] 2 Ch. 273, Wentworth* v. *Bullen, 9 B. & C. 840, Crosskey* v. *Mills, 1 C. M. & R. 298, Gray* v. *Haig, 20 Beav. 219,* referred to. GALSTAUN *v.* WOOMES CHANDRA BONNERJEE (1916)
I. L. R. 44 Calc. 789

REASONABLE NOTICE.

See SCHOOL-MASTER
I. L. R. 44 Calc. 917

RECEIVER.

See CIVIL PROCEDURE CODE (ACT V of 1908), S. 60 (*1*) . **I. L. R. 40 Mad. 302**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 16, 22.
I. L. R. 39 All. 204

——— powers of—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 18 **I. L. R. 39 All. 633**

——— *Order appointing a receiver without naming anybody as receiver, appealability of—Civil Procedure Code (Act V of 1908),*

RECEIVER—*concld.*

O. XL, r. 1, and O. XLIII, r. 1. Held by the Full Bench (SPENCER, J., *contra*), that an order of a Court that a receiver should be appointed in a case without appointing anybody by name as receiver and adjourning the case to a later date for so appointing one is an order under O. XL, r. 1, and is appealable under O. XLIII, r. 1 (*s*), Civil Procedure Code (Act V of 1908). *Venkatasami* v. *Stridavamma, I. L. R. 10 Mad. 179*, applied. *Upendra Nath Nag Chowdry* v. *Bhupendra Nath Nag Chowdry, 13 C. L. J. 157*, and *Srinivas Prosad Singh* v. *Kesho Prosad Singh, 14 C. L. J. 489*, dissented from. *Per* SPENCER, J. Such an order is not appealable being only an interlocutory and not a final order. The test of whether an order is appealable is to see whether it completely disposes of the petition for appointing a receiver or not. If anything remains to be done in the petition, the order passed on it is not a final one and is not appealable. PALANIAPPA CHETTY *v.* PALANIAPPA CHETTY (1916)
I. L. R. 40 Mad. 18

RECITALS IN DEEDS.

See HINDU LAW—ALIENATION
I. L. R. 44 Calc. 186

RECORD-OF-RIGHTS.

——— **entry in—**

See COURT-FEE . **I. L. R. 44 Calc. 352**

RECOUPMENT.

See LAND ACQUISITION
I. L. R. 44 Calc. 219

RECTIFICATION OF REGISTER.

See COMPANIES ACT (VII OF 1913), S. 38
I. L. R. 41 Bom. 76

REDEMPTION.

See MORTGAGE . **I. L. R. 39 All. 618**

See REGISTRATION ACT (XVI OF 1908), S. 17 . . **I. L. R. 41 Bom. 510**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 83, 84 **I. L. R. 39 All. 719**

——— **decree for—**

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 8 . **I. L. R. 39 All. 396**

——— **right of—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 91 . **I. L. R. 39 All. 536**

——— **suit for—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 47; O. XXI, RR. 100, 101.
I. L. R. 40 Mad. 964

See MORTGAGE . **I. L. R. 39 All. 423**

See MORTGAGOR AND MORTGAGEE.
I. L. R. 41 Bom. 357

REDEMPTION SUIT.

See COMMISSIONER.
I. L. R. 41 Bom. 719

REFERENCE TO HIGH COURT.

See ACQUITTAL . **I. L. R. 44 Calc. 703**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 435, 438.
I. L. R. 41 Bom. 47

REFORMATORY SCHOOLS ACT (VIII OF 1897).

——— **s. 31**—*"Youthful offender"—Punishment—Powers of Courts dealing with youthful offenders.* S. 31 of Act VIII of 1897, read with the definition of 'youthful offender' enables practically any Court in the case of an offender under fifteen to deliver him to his parents with or without sureties for his future good behaviour. EMPEROR *v.* ABDUL AZIZ (1916) . **I. L. R. 39 All. 141**

REGISTRATION.

See REGISTRATION ACT (XVI OF 1908).

REGISTRATION ACT (III OF 1877).

See VENDOR AND PURCHASER.
I. L. R. 41 Bom. 300

——— **effect of—**

See GIFT . . **I. L. R. 40 Mad. 204**

REGISTRATION ACT (XVI OF 1908).

——— **s. 17**—*Compulsory registration—Rajinama and Kabuliyat—Mortgage of lands in an Inam village—Mortgagor passing a Rajinama in favour of a third person—Kabuliyat by the person to the Inamdar—Transfer of Khata in Inamdar's books—Extinction of the equity of redemption.* One A, holder of lands in an Inam village, mortgaged the lands with one R (father of defendants Nos. 2 and 3) in 1871. In 1875, A passed a Rajinama in favour of one J and gave notice to the Inamdar to transfer his khata in the Inamdar's books to the name of J. J on the same day passed a Kabul'yat to the Inamdar agreeing to pay assessment due to Government. J in turn had the khata transferred to one V who in 1878 executed a Rajinama in favour of defendant No. 2. In 1913, plaintiffs as the heirs of A sued to redeem the property. The defendants Nos. 2 and 3 contended that they had become owners of the lands. The Subordinate Judge dismissed the suit holding that A transferred his interest in the lands by the Rajinama in 1875 and, therefore, the plaintiffs had no interest in the lands as owners. The Assistant Judge, in appeal, reversed the decree and allowed redemption on the ground that the Rajinama by A could not be proved in Court as it required registration. On appeal to the High Court: *Held*, that the plaintiffs' suit to redeem must fail as the Rajinamas and Kabul'yats although not registered were good evidence of the transfer having taken place since they were documents between the occupant and his superior holder and not documents between the transferor and the transferee: they recited the transfer which had taken place presumably for consideration, but they themselves did not purport to operate as transferring any interest to another. *Held*, further, that even assuming that they fell within the terms of s. 17 of the Indian Registration Act, 1908, as operating to extinguish an interest in immoveable property, it was not shown that they required registration, the interest extinguished by them being of a value less than Rs. 100. *Held*, also, that at the time these transactions took place from 1875 to 1878 it was not necessary according to the law that there should be any document evidencing the transfer but payment of price and delivery of possession completed the transaction. IMAM VALAD IBRAHIM *v.* BHAU APPAJI (1917) . **I. L. R. 41 Bom. 510**

REGISTRATION ACT (XVI OF 1908)—*contd.*

——— **s. 17, sub-s. (1) (d)**—*Lease of land* dar salne mate—*Lease exceeding one year—Registration compulsory.* It was provided by a lease as follows. "We have taken these three fields for cultivation from you yearly (*dar salne mate*) on condition that we are to pay the assessment. We shall go on paying the assessment to Government so long as you give us the fields for cultivation . . . . If we say anything false or unfair or if you come to hear of any fraud or deceit on our part or if we practise such fraud or deceit, we will restore possession of the fields to you as soon as you ask us to do so." *Held*, on a construction of the lease, that the words *dar salne mate* (year to year) taken in connection with the total absence of any date for the expiry of the tenancy suggested that the parties contemplated that the lease should operate for a period exceeding one year; and that, therefore, it was compulsorily registrable under the provisions of s. 17, sub-s. 1 (*d*) of the Indian Registration Act (XVI of 1908). DHURABHAI BHULDAS *v.* MOHANLAL MAGANLAL (1917) . **I. L. R. 41 Bom. 458**

——— **ss. 17, 50**—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54 . **I. L. R. 41 Bom. 550**

——— **ss. 17, 90**—

See LAND REVENUE CODE (BOM. ACT V OF 1879), S. 74 . **I. L. R. 41 Bom. 170**

——— **s. 28**—*Place of registration—Sale-deed—Deed fraudulently registered in a district where none of the property in respect of which it might have been operative, was situated.* In order to prevent certain persons interested in the bulk of the property which purported to be sold, and which was in the district of Pilibhit becoming aware of the existence of a sale-deed, the vendor included in the deed a small piece of property, situated in the city of Bareilly, which in fact did not belong to him, and had the sale-deed registered in Bareilly. *Held*, that this transaction was merely a fraudulent evasion of the Registration law, and that the sale-deed conveyed no title to the purchasers in respect of any of the property comprised in it. *Harendra Lal Roy Chowdhuri* v. *Haridasi Debi, I. L. R. 41 Calc. 972. Jagan Nath* v. *Ram Nath, 12 All. L. J. 913, Bansraj Singh* v. *Rajbans Bharthi, 12 All. L. J. 918*, and *Purna Chandra Bakshi* v. *Nobin Chandra Gangopadhya, 8 C. W. N. 362*, referred to. MANGALI LAL *v.* ABID YAR KHAN (1917) **I. L. R. 39 All. 523**

——— **s. 49**—*Mortgage by deposit of title-deeds—Agreement to mortgage—Document, containing agreement to mortgage, registration of, if necessary—Admissibility of document for any purpose.* Where the plaintiff, who had executed a mortgage by deposit of title-deeds, executed a promissory note to the defendant and agreed that the latter should pay off the mortgage and recover the title-deeds from the mortgagee and retain them himself as additional security, and the terms of the agreement were embodied in two documents which were not registered: *Held*, that the documents required to be registered and were inadmissible in evidence in respect of any of the terms contained therein under s. 49 of the Registration Act (XVI of 1908). *Moore* v. *Culverhouse, 27 Beav. 639; 54 E. R. 254*, and *Neve* v. *Pennel, 2 H. & M. 170*, followed. *Kedarnath* v. *Shamloll Khettry, 11 B. L. R. 405*, distinguished. SWAMI CHETTY *v.* ETHIRAJULU NAIDU (1916) **I. L. R. 40 Mad. 547**

REGISTRATION ACT (XVI OF 1908)—*concld.*

——— **s. 49**—*concld.*

——— **ss. 72 (1), 76 and 77**—*Refusal of Registrar to direct Sub-Registrar to register a document, whether a refusal to register it—Limitation—'Thirty days' in s. 77—Time from which to be computed.* A document was presented for registration to the Sub-Registrar on the last day of the four months allowed for presentation, but the Sub-Registrar declined to receive it owing to pressure of other work. At the suggestion of the Sub-Registrar, it was presented the next day with an application to the Registrar to excuse the delay in presentation. On the refusal of the Registrar to excuse the delay, the Sub-Registrar refused to register the document. From this order an appeal was filed before the Registrar and it was dismissed. The present suit was filed within thirty days of the dismissal of the appeal under s. 77 of the Indian Registration Act, but more than thirty days after the order refusing to extend time. *Held*, (*i*) that the order of the Registrar on appeal, refusing to direct the Sub-Registrar to register the document was a "refusal to register" within ss. 77, 76 and 72 (*i*) of the Act, and (*ii*) that the suit was filed in time, as the thirty days allowed for filing by s. 77 must be counted from the date of the order on appeal and not from the date of the order refusing to extend time. There is no distinction between a refusal to accept a document for registration and a refusal to register it. *Narasimha Nayanavaru* v. *Ramalingam Rao, 10 Mad. L. J. 104*, and *Sivarama Pattar Kariakar* v. *Krishnaiyar, 26 Mad. L. J. 307*, followed. *Kunhimmu* v. *Viyyathamma, I. L. R. 7 Mad. 535*, distinguished. *Gangava* v. *Sayava, I. L. R. 21 Bom. 699, Balambal Ammal* v. *Arunachala Chetti, I. L. R. 18 Mad. 255 and Veeramma* v. *Abbiah, I. L. R. 18 Mad. 99*, not followed. GANGADARA *v.* SAMBASIVA (1916) . **I. L. R. 40 Mad. 759**

——— **ss. 82 and 83**—*Offence under s. 82—Prosecution by a private person—Permission under s. 83, whether necessary.* Permission under s. 83 of the Registration Act (XVI of 1908) is not a preliminary requisite for the institution by a private person of proceedings for an offence under s. 82 of the Act. *Gopinath* v. *Kuldip Singh, I. L. R. 11 Calc. 566* and *Queen-Empress* v. *Vithilinga, I. L. R. 11 Mad. 500*, referred to. *Re* NADATHI (1917) . **I. L. R. 40 Mad. 880**

——— **s. 83**—

See CRIMINAL PROCEDURE CODE, S. 413. **I. L. R. 39 All. 293**

REGULATION (VIII OF 1819).

——— **ss. 8, 9, 15 (2)**—

See SALE FOR ARREARS OF RENT. **I. L. R. 44 Calc. 715**

RELEASE.

——— **recitals in**—

See VENDOR AND PURCHASER. **I. L. R. 41 Bom. 300**

RELIGIOUS ENDOWMENT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 40 Mad. 212**

RELIGIOUS ENDOWMENT—*concld.*

See LIMITATION ACT (IX OF 1908), s. 18; SCH. I, ARTS. 124, 144.
I. L. R. 39 All. 636

——— *Failure of the line of trustees—Right of heirs of founders of the institution to create a new line of trustees. Held*, by the Full Bench (SRINIVASA AYYANGAR J. *contra*), that it is competent to an heir of the founder of a shrine, in whom the trusteeship has vested owing to the failure of the line of the original trustees, to create a new line of trustees. *Per* SRINIVASA AYYANGAR, J. In the absence of any such power in the deed of trust, the Court alone has the power to appoint a trustee; such a power of nomination is equivalent to an alienation of the office of trustee which is illegal. GAURANGA SAHU *v.* SUDEVI MATA (1917) . . **I. L. R. 40 Mad. 612**

RELIGIOUS ENDOWMENTS ACT (XX OF 1863).

——— **s. 10**—*Vacancy in Temple Committee—Jurisdiction of District Judge—Civil Procedure Code (Act V of 1908), s. 115—Power of revision by the High Court—Duty of remaining members of the Committee—Failure to perform duty—Election held after expiration of the statutory time.* The High Court has jurisdiction under s. 115 of the Civil Procedure Code, 1908, to revise an order of the District Judge made under s. 10 of the Religious Endowments Act XX of 1863, on the occurrence of a vacancy in a Temple Committee declaring that an election by the remaining members of the Committee to fill up the vacancy was regularly held; and that the appointment of the person was valid. No appeal lay under the Civil Procedure Code from such an order. In making the order the District Court was acting in a judicial capacity as a Court of law, and not merely in an administrative capacity. The matter in which the order of the District Court was made was a "case" within the meaning of s. 115 of the Civil Procedure Code, 1908. A "case" includes an *ex parte* application such as that made in this matter. *Minakshi Nayudu* v. *Subramanya Sastri, I. L. R. 11 Mad. 26; L. R. 14 I. A. 160*, distinguished. On the true construction of s. 10 of Act XX of 1863 the power of the remaining members of the Committee to fill up the vacancy must be exercised within three months from the date of the occurrence of the vacancy. The District Court had no jurisdiction after the expiration of the three months to direct the remaining members of the Committee to fill up the vacancy by election, or to make an order purporting to validate the appointment of the person elected. If the Committee do not perform their duty by holding an election within three months to fill up the vacancy, a subsequent election by the remaining members after the expiration of three months is invalid; and this is so notwithstanding that such a construction would enable the remaining members of the Committee by their own default, to practically disfranchise the electors, and at the discretion of the Court possibly to procure the patronage for themselves. The only remedy for that is to alter the law, if wrong, by legislation. The Board can only declare the law. BALAKRISHNA UDAYAR *v.* VASUDEVA AYYAR (1917) . **I. L. R. 40 Mad. 793**

——— **s. 18**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . **I. L. R. 40 Mad. 212**

RELIGIOUS OFFICE.

See HINDU LAW SUCCESSION.
I. L. R. 40 Mad. 165

REMAINDERMAN.

See ESTOPPEL . **I. L. R. 44 Calc. 145**

REMAND.

See CIVIL PROCEDURE CODE (1908), O. XLI, R. 23. **I. L. R. 39 All. 165**

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 816

——— *Appellate Court, power of—Inherent jurisdiction—Correction of omissions or defects in the trial—De novo trial—Civil Procedure Code (Act V of 1908), ss. 107, 151; O. XLI, r. 23.* The power of remand under s. 107 of the Civil Procedure Code is limited to the case described in O. XLI, r. 23, but nothing in that section restricts in any manner the application of the principle of inherent power recognised by s. 151 of the Code. The powers of the Appellate Court as regards remand are thus not restricted to the case specified in O. XLI, r. 23, but the Court, by reason of its inherent jurisdiction, recognised and preserved in the Code, may order a remand in cases other than the case specified in O. XLI, r. 23, if it be necessary for the ends of justice. *Nabin Chandra Tripati* v. *Prankrishna De, I. L. R. 41 Calc. 108*, dissented from. Inherent jurisdiction must be exercised with care, subject to general legal principles and to the condition that the matter is not one with which the Legislature has so specifically dealt as to preclude the exercise of inherent power. *Per* WOODROFFE, *J.*—Whether justice does require a Court to invoke its inherent jurisdiction, must be determined by that Court, with reference to the particular facts of the case, and the rule of law that a Court cannot invoke an inherent jurisdiction where there is a provision in the Code, whether by way of remand or otherwise, which, if applied, will meet the justice of the case. *Per* MOOKERJEE, *J.*—That the Code itself recognises the power of a Court to direct a remand in circumstances other than those specified in O. XLI, r. 23, is clear from the terms of s. 99. The Court of Appeal is invested with plenary powers to correct errors of procedure committed by the trial Court. Where the Court of Appeal is satisfied that the correction of the omission or defects in the trial is not reasonably practicable by recourse to one or other of the provisions mentioned, that is, where it is clearly apparent that the Appellate Court cannot itself satisfactorily dispose of the suit on the merits by the adoption of the specific procedure mentioned in O. XLI, r. 24 to 29, a remand for retrial is not only permissible but obviously incumbent on the Court. GHUZNAVI *v.* THE ALLAHABAD BANK, LTD. (1917) . **I. L. R. 44 Calc. 929**

RENT.

See RENT IN KIND.

See RENT RESERVED.

See AGRA TENANCY ACT (II OF 1901), SS. 4, 167 . **I. L. R. 39 All. 605**

——— **legal right to remission**—

See ESTATES LAND ACT (MAD. ACT I OF 1908), S. 4, 27, 73, 143.
I. L. R. 40 Mad. 640

RENT DECREE.

1. ——————— *Rent, arrears of—Decree for ejectment for non-payment—Act VIII (B. C.) of 1869, s. 52—Decree for ejectment for non-payment of arrears of rent—Period of 15 days, if can be extended by executing Court after appeal dismissed.* Under s. 52 of Act VIII (B. C.) of 1869, the period of 15 days can only be extended by the Court of first instance at the time of drawing the decree or by the Appellate Court when disposing of the appeal from the decree, but cannot be subsequently extended by the Court executing the decree. HUNAI SHEIKH *v.* SARAT CHANDRA DUTTA (1917) . . . **21 C. W. N. 749**

2. ——————— *Rent decree obtained by putnidar—Sale of putni under Reg. VIII of 1819 after application for execution but before sale—Decree, if to be executed as rent decree—Bengal Tenancy Act (VIII of 1885), s. 65.* Where after his putni taluk had been sold under Reg. VIII of 1819, the putnidar sued a tenant for previously accrued arrears of rent and recovered a decree and subsequently the putni sale was set aside and the putnidar thereafter applied for execution of the decree by sale of the holding under the Bengal Tenancy Act, but before the sale, the putni was again sold under Reg. VIII of 1819: *Held*, that the decree could be executed as a rent decree, the case being covered by the Full Bench decision in *Khetrapal Singh* v. *Krithartha Moyee Dasi, I. L. R. 33 Calc. 566: s.c. 10 C. W. N. 547*, which has not been overruled by the Privy Council in *Forbes* v. *Maharaj Bahadur Singh, I. L. R. 41 Calc. 926: s. c. 18 C. W. N. 747*, MANINDRA NATH GHOSH *v* ASHUTOSH GHOSH (1917) . **21 C. W. N. 1132**

RENT IN KIND.

——————— **conversion of, into money rent—**

See HINDU LAW REVERSIONERS.
I. L. R. 40 Mad. 871

RENT RECOVERY (UNDER TENURES) ACT (BENG. VIII OF 1865).

——————— **s. 3—**

See SALE FOR ARREARS OF RENT.
I. L. R. 44 Calc. 715

RENT RESERVED.

See LANDLORD AND TENANT.
I. L. R. 44 Calc. 403

REPRESENTATION.

See HINDU LAW—ALIENATION.
I. L. R. 44 Calc. 186

REPRESENTATIVE.

See CIVIL PROCEDURE CODE, 1908, SS. 47, 52 . . **I. L. R. 39 All. 47**

RESERVED RENT.

See TENANCY-AT-WILL.
I. L. R. 44 Calc. 241

RESIDENCE.

See SUCCESSION ACT (X OF 1865), SS. 7, 9, 10 . . **I. L. R. Bom. 687**

RES JUDICATA.

See CIVIL PROCEDURE CODE (1908), S. 11.
I. L. R. 39 All. 626, 717

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. II, R. 2.
I. L. R. 40 Mad. 291

See JURISDICTION.
I. L. R. 44 Calc. 367

RES JUDICATA—*contd.*

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 22 **I. L. R. 39 All. 353**

1. ——————— *Finding in claimcase, if res judicata re other properties—Civil Procedure Code (Act V of 1908), O. XXI, r. 63, effect of—Wakf, validity of.* Properties A and B are included in an alleged wakf. The finding in a claim case regarding A that the wakf is a fraudulent transaction is not conclusive in a suit for declaration and possession regarding a share in B. An order in a claim case is conclusive only as regards the particular property in dispute. *Held*, further, that a wakf having been given effect to during the life time of the wakifs, is valid and irrevocable. *Surnamoyi Dasi* v. *Ashutosh Goswami, I. L. R. 27 Calc. 714, Koyyana Chittemma* v. *Doosy Gauramma, I. L. R. 29 Mad. 225, Ramu Aiyar* v. *A. L. Palaniappa Chetty, I. L. R. 35 Mad. 35*, distinguished. *Radha Prasad Singh* v. *Lal Sahab Rai, I. L. R. 13 All. 53, Dinkar Ballal Chakradev* v. *Hari Shridhar Apte, I. L. R. 14 Bom. 206*, referred to. ASHNA BIBI *v.* AWALJADI BIBI (1916)
I. L. R. 44 Calc. 698

2. ——————— *Execution of decree—Effect of the decision of an issue in the suit upon a cognate but not precisely similar issue raised in execution proceedings.* In a suit for sale on a *mortgage* the main defence raised was that the mortgagor had no right to mortgage the property in suit, inasmuch as it formed part of a grant, originally made by Government, which was in the nature of a political pension, and inalienable. This defence was accepted, and the Court, refusing to make a decree on the mortgage, gave the plaintiffs a money decree only. In execution of this money decree the plaintiffs decree-holders sought to attach certain property of the judgment-debtors not being part of the property included in their mortgage. Whereupon it was objected by the judgment-debtors that this property also formed part of the original grant and could not be taken in execution. *Held*, that the question so raised was not concluded by the finding arrived at in the suit in respect of the property which purported to have been mortgaged to the plaintiffs. *Mongalathammal* v. *Narayanaswami Aiyar, I. L. R.* 30 *Mad. 461*, and *Aghore Nath Mukerjee* v. *Srimati Kamini Debi, 11 C. L. J. 461*, referred to. *Held*, that having regard to the substance rather than to the form of the proceedings before the court below, there was in this matter a reference to arbitration by the Court under the earlier paragraphs of the second schedule to the Code of Civil Procedure, and in the circumstances the appeal, which was against the decree based on the award was not maintainable. *Nidamarthi Krishnamoorthi* v. *Garigiparti Ganapatilingam, 34 Indian Cases 741*, and *Shama Sundram Iyer* v. *Abdul Latif, I. L. R. 27 Calc. 61*, referred to. RAM NANDAN DHAR DUBE *v.* KANIZ FATIMA BIBI (1917)
I. L. R. 39 All. 379

3. ——————— *Finding when res judicata between co-defendants.* In order that a finding in a case should be *res judicata* between co-defendants three things are necessary: (i) that there should be a conflict of interest between co-defendants, (ii) that it should be necessary to decide on that conflict in order to give to the plaintiff the relief appropriate to his suit, (iii) that the judgment should contain a decision of the question raised as

RES JUDICATA—*concld.*

between co-defendants. JADAV CHANDRA SIRKAR *v.* KAILASH CHANDRA SING (1916) **21 C. W. N. 693**

RESTORATION.

See SMALL CAUSE COURT SUIT. **I. L. R. 44 Calc. 950**

RESUMPTION.

See RESUMPTION BY GOVERNMENT.

See RESUMPTION OF SARANJAM.

RESUMPTION AND ENFRANCHISEMENT.

——— **of personal or service inams, distinction between—**

See CHARITABLE INAMS. **I. L. R. 40 Mad. 939**

RESUMPTION BY GOVERNMENT.

See CHAUKIDARI CHAKARAN LANDS. **I. L. R. 44 Calc. 841**

RESUMPTION OF MUAFI.

See AGRA TENANCY ACT (II OF 1901), S. 158 . . **I. L. R. 39 All. 689**

RESUMPTION OF SARANJAM.

See SARANJAM . **I. L. R. 41 Bom. 408**

REVENUE SALE LAW.

See SALE FOR ARREARS OF REVENUE.

REVERSAL OF JUDGMENT.

——— *Effect of, on connected and dependent orders—Restitution of money taken away by decree-holder in execution of decree under erroneous decision on question of limitation—Restitution, if must be with interest—Limitation Act (IX of 1908), Art. 181.* The decree-holders made an application for execution of a decree by attachment and sale of moveables, which was opposed by the judgment-debtors on the ground of limitation. The objection was treated as a separate case. While this application for execution was pending, the decree-holders made a fresh application for execution to attach funds in Court standing to the credit of two of the judgment-debtors. This application was treated as a separate proceeding. The objection case was decided against the judgment-debtors and the Court thereupon made an order in the second execution case directing the decree-holders to take steps. Then on the decree-holders' application payment of the fund in deposit in Court was ordered. An appeal was preferred to the High Court in the objection case but none against the payment order. This appeal was decreed and the High Court directed that any sums taken away by the decree-holders under the order of the Court below must be refunded at once. The judgment-debtors whose deposit had been taken away by the decree-holders then applied to the Court below for restitution: *Held*, that it is a general rule that upon the reversal of a judgment, order or decree all connected or dependent judgments or orders fall with it, specially judgments subsequently entered and dependent thereon although this rule does not operate by implication to set aside a distinct and independent judgment or proceeding though it forms a part of the same litigation. That the payment order was in essence ancillary to the decision in the objection case and the cancellation of the order in the objection case by the High Court in appeal involved by necessary implication a cancellation of the consequential payment order. The judgment-debtors were therefore entitled to restitution even though they did not formally appeal against the payment order. That the only Article of the Limitation Act which may possibly apply to an application by the judgment-debtors for restitution is Art. 181 and the period of three years provided therein commences from the date when the erroneous order is set aside. That restitution must be made of the sum withdrawn together with interest thereon at 6 per cent. per annum. ASUTOSH GOSWAMI *v.* UPENDRO PROSAD MITRA (1916) . . **21 C. W. N. 564**

REVERSAL OF JUDGMENT—*concld.*

REVERSIONER.

See HINDU LAW—ADOPTION. **I. L. R. 40 Mad. 846**

See HINDU LAW—WIDOW. **I. L. R. 39 All. 1, 520**

——— **claim by—**

See HINDU LAW—INHERITANCE. **I. L. R. 40 Mad. 654**

——— **suit by—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 118 . **I. L. R. 41 Bom. 728**

REVIEW.

See COUNTERFEIT COIN. **I. L. R. 44 Calc. 477**

See PRACTICE . **I. L. R. 44 Calc. 28**

See SMALL CAUSE COURT SUIT. **I. L. R. 44 Calc. 950**

——— **application for—**

See LIMITATION . **L. R. 44 I. A. 218**

1. ——— *Application for review subsequent to filing of second appeal—Civil Procedure Code (Act V of 1908), s. 114; O. XLVII, r. 1.* Where an application for review of judgment is filed and later, during the pendency of the same, an appeal is preferred: *Held*, that the Court has power and in fact is bound to proceed with the application for review of judgment notwithstanding the fact that an appeal has been subsequently filed. But the power exists so long as the appeal is not heard. *Bharat Chandra Mazumdar* v. *Ramgunga Sen, (1866) B. L. R. (F. B.) 362, Chenna Reddi* v. *Peddaobi Reddi, I. L. R. 32 Mad. 416,* followed. *Thacoor Prosad* v. *Baluck Ram, 12 C. L. R. 64, Sarat Chandra Dhal* v. *Damodar Manna, 12 C. W. N. 885, Narayan Purushottam Gargote* v. *Laxmibai, I. L. R. 38 Bom. 416,* referred to. On the other hand, if the application is successful, the appeal cannot proceed. *Kanhaiya Lal* v. *Baldeo Prasad, I. L. R. 28 All. 240,* referred to. PYARI MOHAN KUNDU *v.* KALU KHAN (1917) . . **I. L. R. 44 Calc. 1011**

2. ——— *Appeals under clause 15 of the Letters Patent—Petitions for review in, maintainability of.* It is competent to the High Court to review judgments in appeals preferred under clause 15 of the Letters Patent. VENKATASUBBARAYADU *v.* SRI RAJAH KRISHNA YACHENDRULU VARU BAHADUR (1915) **I. L. R. 40 Mad. 651**

3. ——— *Principle on which a review ought to be granted when new facts are alleged to have been discovered—Civil Procedure Code (Act*

REVIEW—*concld.*

V of 1908)—O. XLIII, r. 1 (w); O. XLVII, rr. 4, 7, 8—"Strict proof," meaning of—Conclusions whether to be based on mere comparison of handwriting. It is most important that there be some finality in the trial of cases and the greatest care ought to be exercised in granting a review, when that review is asked for upon the allegation that fresh evidence has been discovered since the judgment was given. The new evidence must at least be such as is presumably to be believed, and if believed would be conclusive. *Per* MOOKERJEE, *J.*, O. XLIII, r. 1 (*w*) must be read as controlled by O. XLVII, r. 7 of the Civil Procedure Code, 1908; and an appeal from an order granting a review may be attacked only on the grounds stated in O. XLVII, r. 7. "Strict proof" means proof according to the formalities of the law and has no reference to the sufficiency of the quantum of evidence adduced. NUNDO LAL MULLIK *v.* PANCHANAN MUKHERJI (1917)
21 C. W. N. 1076

REVISION.

See REVISION BY SINGLE JUDGE.

See CIVIL PROCEDURE CODE (1908), S. 115.
I. L. R. 39 All. 254

See CIVIL PROCEDURE CODE (1908), SCH. II, PARAS. 15, 16.
I. L. R. 39 All. 489

See CRIMINAL PROCEDURE CODE, S. 125.
I. L. R. 39 All. 466

See CRIMINAL PROCEDURE CODE, S. 145.
I. L. R. 39 All. 612

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 439.
I. L. R. 41 Bom. 560

See CRIMINAL PROCEDURE CODE, S. 476.
I. L. R. 39 All. 91, 367

REVISION BY SINGLE JUDGE.

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 816

REVISIONAL JURISDICTION.

See APPEAL, RIGHT OF.
I. L. R. 44 Calc. 804

RISK NOTE.

See EAST INDIAN RAILWAY.
21 C. W. N. 815

RIVAL DECREE-HOLDERS.

See EXECUTION OF DECREE.
I. L. R. 44 Calc. 1072

RIWAJ-I-AM.

See CUSTOM . **I. L. R. 39 All. 574**

——— **evidentiary value of—**

See CUSTOM . **I. L. R. 44 Calc. 749**

ROYALTIES.

——— **suit for—**

See LIMITATION. **I. L. R. 44 Calc. 759**

ROYALTY OR SEIGNIORAGE FEES.

——— **right of Government to buy—**

See INAM . **I. L. R. 40 Mad. 268**

RYOTI LAND.

See ESTATES LAND ACT (MAD. I OF 1908), SS. 3 (7), (1), 6 (1).
I. L. R. 40 Mad. 529

S

SALE.

See SALE BY GOVERNMENT.

See SALE FOR ARREARS OF REVENUE.

See SALE IN EXECUTION OF DECREE.

See CONSTRUCTION OF DOCUMENT.
I. L. R. 41 Bom. 5

See HINDU LAW—WIDOW.
I. L. R. 39 All. 463

See INSOLVENCY.
I. L. R. 44 Calc. 1016

See LAND REVENUE CODE (BOM. ACT V OF 1879), S. 74 . **I. L. R. 41 Bom. 170**

SALE BY GOVERNMENT.

See WASTE LANDS ACT, 1863, S. 18.
I. L. R. 44 Calc. 328

SALE DEED.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54.
I. L. R. 41 Bom. 550

——— **for a low value, from client—**

See PROFESSIONAL MISCONDUCT.
I. L. R. 40 Mad. 69

SALE FOR ARREARS OF RENT.

——— *Purchase of putni—Opposition to purchaser's possession—Application for proclamation—The District Judge or the Collector, the proper authority to issue proclamation—Rent Recovery (Under-Tenures) Act (Beng. VIII of 1865), s. 3—Repealing Act (XVI of 1874)—Regulations VIII of 1819, ss. 8, 9, 15 (2); I of 1820 and VII of 1832, s. 16.* Cl. (*2*) of s. 15 of Regulation VIII of 1819 has not been affected by s. 3 of Beng. Act VIII of 1865. Proceedings taken to annul the sale of certain *putni* lands sold for arrears of rent having terminated in favour of the purchaser and the sale having become final and conclusive, the purchaser in attempting to realise the rents from the cultivators of the lands comprised in the tenure purchased by him was opposed in his attempt by some of the intermediate holders who claimed interest between the late *putnidar* and the cultivators. Thereupon, he applied to the District Judge to issue a proclamation under s. 15 of the Putni Reg. VIII of 1819. The District Judge returned the application and directed that it should be made to the Collector who was the proper authority to issue the proclamation. *Held*, that the view taken by the District Judge was erroneous and that he had failed to exercise the jurisdiction still vested in him by law under cl. (*2*) of s. 15 of the Putni Reg. VIII of 1819. MANMATHA NATH MITTER *v.* DISTRICT JUDGE, 24-PARGANAS (1916)
I. L. R. 44 Calc. 715

SALE FOR ARREARS OF REVENUE.

1. ——— *Act XI of 1859—Co-owners of a share of estate subject to usufructuary mortgage—Mortgagee in possession, undertaking by, to pay revenue—Default deliberately made by agents of minor mortgagee—Purchase at sale for arrears by mortgagee's agents—Benami purchase—Fiduciary relation between mortgagee and mortgagors—Suit by other co-owners to set aside sale—Terms on recovery of property—Contribution towards expenses properly incurred by*

SALE FOR ARREARS OF REVENUE—*contd.*

mortgagee—Duty of counsel in ex parte case—Privy Council, practice of. Of a 12 annas share of a revenue-paying estate, a 3 annas share belonged to the plaintiffs (respondents) subject to a usufructuary mortgage of that share for the benefit of the defendant (appellant) a minor who, as mortgagee in possession, undertook (as was stipulated in the mortgage deed) to pay the revenue to Government for the mortgaged share. The remaining nine annas belonged to others of the plaintiffs. In June 1905, a sum of Rs. 3, annas 6 in excess of the quota payable was paid on the mortgagee's behalf by his agents. In September 1906, only Rs. 9 instead of Rs. 12 was so paid, and that left a balance owing which in due course amounted to an arrear within the meaning of Act XI of 1859 and to recover this arrear the 12 annas estate was sold by the Collector on 25th March 1907 and purchased by the agents benami on behalf of the mortgagee defendant. The High Court, reversing the judgment of the Subordinate Judge who had dismissed the suit, found that the purchase was fraudulent, while their Lordships of the Judicial Committee acquitted the minor of any personal misconduct in relation to the default or sale, and were of opinion that regarding the position as a whole it led to the conclusion that the revenue was intentionally allowed by the agents to fall into arrear with a view to the property being put up for sale and bought on behalf of the minor. *Held*, that the arrear which occasioned the sale was due to the insufficient payment made in respect of the three annas share, and this was none the less the result of the default of those interested in that share because an excess payment had been made in June 1903; that had been long absorbed and had ceased to be an excess credit in the touji ledger. However free from personal blame the minor may have been, he could not profit by his agents' deliberate default committed in breach of the terms of his mortgage. As against his mortgagors, therefore, the mortgagee could not be allowed to hold for himself any advantage gained by the default for which his agents were responsible, nor could he be permitted to hold such advantage to the prejudice of the co-owners. *Doorga Singh* v. *Sheo Pershad Singh, I. L. R. 16 Calc. 194*, dissented from. *Faizer Rahman* v. *Maimuna Khatun, 17 C. W. N. 1233*, approved. The mortgagee here through his representatives had a duty to perform which was inconsisent with his becoming a purchaser in the way he did; his title, therefore, could not operate to the exclusion of his co-owners. It was no answer to say that Act XI of 1859 contemplates a purchase by a co-sharer. The sale would stand, but under the circumstances the transaction was in effect nothing more than payment of an arrear for the benefit of all. But that gave a right to contribution so that it must be a term of granting the plaintiff's equitable relief that they should contribute to the expenses properly incurred by or for the mortgagee in the purchase of the property. Where an appeal is heard *ex parte* it is the duty of counsel to bring to the notice of the Board adverse as well as favourable authorities. DEO NANDAN PRASHAD *v.* JANKI SINGH (1916)

I. L. R. 44 Calc. 573

2.——*Defaulter—Assam Land Revenue Regulation (I of 1886), ss. 63, 67, 85—Limitation—Limitation Act (IX of 1908), Sch. 1, Arts. 121, 142.* Where persons are in actual possession of a part of the estate sold for arrears of revenue under the Assam Land and Revenue Regulation they are defaulters by reason of s. 67. *Aftar Ali* v. *Brojendra Kishore Roy Chowdhury, 24 C. L. J. 60*, referred to. A suit for recovery of possession brought within 12 years from the date on which the Collector gave symbolical possession to the purchasers, is within time. *Mozuffer Wahid* v. *Abdus Samad, 6 C. L. R. 539*, followed. S. 63 cannot be construed as restricted to persons who *profess* to hold the land as included in the estate sold for arrears of revenue. MAHIM CHANDRA CHOWDHURY *v.* PIYARI LAL DAS (1916) . . . **I. L. R. 44 Calc. 412**

SALE IN EXECUTION OF DECREE.

——*Decree against father of joint mitakshara family—Suit by sons the other members of the family to have it declared that their shares were not affected by the sale under mortgage decree—"Right, title and interest" of judgment-debtor—Substance and not technicalities of transaction to be regarded in cases of this kind.* In execution of a mortgage decree against the father of a joint mitakshara family who alone was a party to the mortgage, the decree and the execution proceedings, his two sons, the other members of the family, objected that only one-third of a patni taluk forming the joint family property could be sold, on the allegation that the debts in respect of which the decree had been made were contracted for illegal and immoral purposes, and the order for sale was amended by adding the words "right, title and interest" of the judgment-debtor as indicating what was to be sold, which expression the Court said was not calculated to affect the case of either party. The property was sold and purchased by the decree-holder. In a suit by the sons to have it declared that only one-third of the property passed by the sale, both Courts in India found that the debts were for legal and necessary purposes. The Subordinate Judge made a decree in the plaintiffs' favour which was reversed by the High Court on appeal. *Held* (affirming the decision of the High Court), that the proper construction of the order for sale, as amended, was that, if the plaintiffs succeeded in establishing that the debts had been incurred for immoral purposes, only one-third of the property would be affected by the sale, while if they failed in that contention the whole of the property would be held to have passed by the sale. The expression "right, title and interest" did not limit what was to be sold to a one-third share. In cases of this kind the substance, and not the mere technicalities of the transaction, should be regarded. *Mahabir Pershad* v. *Moheswar Nath Sahai, I. L. R. 17 Calc. 584; L. R. 17 I. A. 11*, followed. SRIPAT SINGH DUGAR *v.* PRODYOT KUMAR TAGORE (1916) . **I. L. R. 44 Calc. 524**

SALE OF GOODS.

See CIVIL PROCEDURE CODE (1908), s. 20.

I. L. R. 39 All. 368

SALE OF IMMOVEABLE PROPERTY.

——*Agreement by vendee to pay revenue—Reservation of portion out of property sold—Agreement not binding on transferee.*

SALE OF IMMOVEABLE PROPERTY—*concld.*

The vendor of a village reserved for her maintenance 196 bighas, and the vendee also agreed not to ask for rent of those 196 bighas. Vendee further did not insist upon payment of the proportionate share of Government revenue due from the vendor, but paid it himself. *Held*, that any agreement which might have existed as between the vendor and the vendee as regards the payment of Government revenue was a purely personal matter and could not bind the vendee after the death of the vendor when the land was in the possession of her legatee. *Sri Thakurji Maharaj* v. *Lachmi Narayan, 11 All. L. J. 212* *Ram Gobind* v. *Sri Thakurji Maharaj, 11 All. L. J. 231*, and *Ali Hussain* v. *Hakim-ullah, I. L. R. 38 All. 230*, referred to. PACHAN SINGH *v.* JANGJIT SINGH (1916) . . **I. L. R. 39 All. 166**

SANCTION FOR PROSECUTION.

See APPEAL, RIGHT OF.
I. L. R. 44 Calc. 804

See CRIMINAL PROCEDURE CODE, S 195.
I. L. R. 39 All. 147, 657

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195, SUB- S. (*6*).
I. L. R. 41 Bom. 631

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), S. 18.
I. L. R. 39 All. 297

1. ———— *False information to the police followed by a complaint to the Magistrate on the same facts and the same charge—Complaint investigated by the Magistrate—Necessity of sanction to prosecute informant only in respect of the false charge to the police—Criminal Procedure Code (Act V of 1898), s. 195 (1) (b).* Where an information to the police is followed by a complaint to the Court, based on the same allegations and the same charge, and such complaint has been investigated by the Court, the sanction or complaint of the Court itself is necessary even for a prosecution of the informant under s. 211 of the Penal Code, in respect of the false charge made to the police. *Tayebullah* v. *King-Emperor, 24 C. L. J. 134 ; I. L. R. 43 Calc. 1152*, approved. *Putiram Ruidas* v. *Mahomed Kasem, 3 C. W. N. 33*, discussed *Jadu Nandan Singh* v. *Emperor, I. L. R. 37 Calc. 250*, distinguished. *Emperor* v. *Hardwar Pal, I. L. R. 34 All. 522*, referred to. BROWN *v.* ANANDA LAL MULLICK (1916)
I. L. R. 44 Calc. 650

2. ———— *High Court Jurisdiction of—Practice—Procedure—Suit in the Presidency Small Cause Court—Statement made in the course of a judicial proceeding—Sanction refused by Presidency Small Cause Court—Revision by single Judge sitting on the Original Side of High Court—Remand—Powers of the Chief Justice to remit case for retrial by Division Bench of High Court—Civil Procedure Code (Act V of 1908), s. 115—Criminal Procedure Code (Act V of 1898), ss. 195 (6) and (7) (c), 435 and 439—High Court Rules, Appellate Side, Chapter II, rule V.* The assistance of a Judge of a High Court can, in a matter of sanction to prosecute from the Presidency Small Cause Court, be invoked only under s. 195 (*6*) of the Criminal Procedure Code. Under that provision the only order which such a Judge is competent to pass is to revoke a sanction given or grant a sanction refused by the Subordinate Court. He has no jurisdiction to remand the case to the Small Cause Court for further enquiry. Under the Rules of Court (Chap. II, r. V) he would have such jurisdiction if this were a matter under s. 115 of the Civil Procedure Code, but as it falls within s. 195 (*6*) of the Criminal Procedure Code, it can be decided only by a Judge or Judges to whom it may have been allocated by the Chief Justice. The Judge exercising jurisdiction under s. 195 (*6*) of the Criminal Procedure Code is competent to take additional evidence to enable him to decide whether he should confirm or reverse the order of the Subordinate Court. BUDHU LAL *v.* CHATTU GOPE (1916) . **I. L. R. 44 Calc. 816**

3. ———— *"Produced" meaning of—Document called for by a party and brought into Court, and referred to by his pleader and the Court—Antecedent forgery and user before the Sub-Registrar—Subsequent production of document in Court—Necessity of sanction—Criminal Procedure Code (Act V of 1898), s. 195 (1) (c).* Where a document was called for by a party to a proceeding under s. 145 of the Criminal Procedure Code, brought into Court and referred to by his pleader in argument and by the Magistrate in his judgment, though he expressly refrained from any opinion, as to its authenticity :— *Held*, that the document was "produced" in the proceeding within the meaning of s. 195 (*1*) (c) of the Code. *Guru Charan Shaha* v. *Girija Sundari Dassi, I. L. R. 29 Calc. 887, Akhil Chandra De* v. *Queen-Empress, I. L. R. 22 Calc. 1004, Sew Bollok Singh* v. *Ramdhin Bania, 14 C. W. N. 806*, and *In re Gopal Sidheshwar, 9 Bom. L. R. 735*, referred to. Where, before complaint made, a document has been produced in a Court by a party to a proceeding before it, the sanction of such Court is necessary for his prosecution in respect of an antecedent forgery and antecedent user before a Sub-Registrar. *Teni Shah* v. *Bolahi Shah, 14 C. W. N. 479, Emperor* v. *Bhawani Das, I. L. R. 38 All. 169*, and *Re Parameswaran Nambudri, I. L. R. 39 Mad. 677*, followed. *Noor Mahomed Cassum* v. *Kaikhosru Manickjee, 4 Bom. L. R. 268*, dissented from. NALINI KANTA LAHA *v.* ANUKUL CHANDRA LAHA (1917)
I. L. R. 44 Calc. 1002

4. ———— *Propriety of process under s. 500, Penal Code—Discharge—Acquittal—Penal Code (Act XLV of 1860), ss. 211, 500—Criminal Procedure Code (Act V of 1898), s. 195.* Where an offence though described as an offence under s. 500 of the Penal Code, still remains an offence "punishable" under s. 211. Process should not issue under the former section on the application of a person discharged or acquitted, when the Court has refused saction under the latter section. PRAFULLA KUMAR GHOSE *v.* HARENDRA NATH CHATTERJEE (1916) **I. L. R. 44 Calc. 970**

SANCTION FOR PROSECUTION—*concld.*

SANTAN.

———— Means issue generally and is not limited to male issue. KUMUD KRISHNA MANDAL *v.* JOGENDRO NATH SARKAR (1917)
21 C. W. N. 854

SARANJAM.

———— *Grant of royal share of revenue—Resumption of Saranjam—Lands can be still held on payment of assessment—Suit to recover possession of land—Revenue Jurisdiction Act (X of 1876), s. 4—Pensions Act (XXIII of 1871), s. 4.* It is well established that in the case of Saranjam or Jaghir (the terms being convertible) the grant is

SARANJAM—*concld.*

ordinarily of the royal share of the revenue and not of the soil, and that the burden of proving that in any particular case it is a grant of the soil lies upon the party alleging it. *Krishnarav Ganesh* v. *Rangrav, 4 Bom. H. C. R. (A. C. J.) 1, Ramchandra* v. *Venkatrao, I. L. R. 6 Bom. 598, 603*, and *Ramkrishnarao* v. *Nanarao, 5 Bom. L. R. 983*, followed. The right to the possession of the land in the case of the Saranjam grant of the royal share of the land revenue does not form part of the Saranjam and is independent of it. The Government can, therefore, resume what they granted as Saranjam, *viz.*, the royal share of the land revenue; and the right to the occupation of the land subject of course to the payment of the full assessment can and does survive the resumption of the Saranjam. Neither s. 4 of the Revenue Jurisdiction Act (X of 1876) nor s. 4 of the Pensions Act (XXIII of 1871) bars a suit to recover possession of lands, the Saranjam rights in which have been resumed by Government. GURURAO SHRINIVAS *v.* SECRETARY OF STATE FOR INDIA (1917) . . **I. L. R. 41 Bom. 408**

SCHEDULED DISTRICTS ACT (XIV OF 1874).

——— s. 7—R. 44—*Rule 44 not ultra vires—Jurisdiction of High Court over conviction and sentences by Mewas Agent.* R. 44 framed by the Government of Bombay under the Scheduled Districts Act, 1874, is not *ultra vires*. The High Court of Bombay may, therefore, take cognizance of any case decided by the Mewas Agent on the petition of a convicted party, and if it thinks fit send for the proceeding and pass a fresh decision. EMPEROR *v.* NAZAR MAHOMED (1917)
I. L. R. 41 Bom. 657

SCHOOLMASTER.

——— *Contract of service—Termination by notice—Reasonable notice, what is, in case of school-master—Custom, how proved.* One G. H. W. was appointed a teacher at the Armenian College, Calcutta, for a period of three years from the 1st March 1912. After the expiry of the period he continued in the employ of the College until July 1916, when he received notice terminating his service as from the 1st August, and, in lieu of a month's notice, was paid a month's salary and a certain sum of money for a month's board and lodging. *Held*, that he was entitled to a reasonable notice and that in such a case, in the absence of misconduct, either three months' notice, or a term's notice would be reasonable notice. *Todd* v. *Kerrich, 8 Exch. 151*, referred to. *Held*, further, that, on the evidence adduced, no custom had been established by virtue of which the plaintiff's employment could be terminated by a month's notice. Usage is proved by the oral evidence of persons who become cognisant of its existence by reason of their occupation in the particular trade or business and the evidence establishing custom or usage must be clear, convincing and consistent, and to prove an usage in a particular trade it must be shown that the usage is consistent and reasonable and was universally acquiesced in, and that everybody acknowledged it in the trade and knew of it or might know of it, if he took the pains to enquire. WITTENBAKER *v.* J. C. GALSTAUN AND OTHERS (1917) . . . **I. L. R. 44 Calc. 917**

SECOND APPEAL.

See ESTOPPEL . **L. R. 44 I. A. 213**

See EVIDENCE ACT (I OF 1872), S. 32(5).
I. L. R. 39 All. 426

SECOND APPEAL—*concld.*

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 8.
I. L. R. 41 Bom. 367

See REVIEW . **I. L. R. 44 Calc. 1011**

——— *Civil Procedure Code (Act V of 1908), s. 100—Question whether custom exists if of fact or law.* While the question whether a given state of facts establishes a binding custom or usage is a question of law, the question whether such a state of facts has been proved by the evidence is a question of fact. KAILASH CHANDRA DATTA *v.* PADMAKISORE ROY (1917)
21 C. W. N. 972

SECURITY.

See JUTE . . **I. L. R. 44 Calc. 98**

See MORTGAGE . **I. L. R. 44 Calc. 388**

SECURITY FOR GOOD BEHAVIOUR.

See CRIMINAL PROCEDURE CODE, S. 110.
I. L. R. 39 All. 139

SECURITY TO KEEP THE PEACE.

See CRIMINAL PROCEDURE CODE, S. 125.
I. L. R. 39 All. 466

SEIGNIORAGE FEES OR ROYALTY.

——— **right of Government to levy—**

See INAM . **I. L. R. 40 Mad. 268**

SENATE AND SYNDICATE.

——— **respective powers of—**

See SPECIFIC RELIEF ACT (I OF 1877), S. 45 . . **I. L. R. 40 Mad. 125**

SENTENCE.

See CRIMINAL PROCEDURE CODE, S. 439.
I. L. R. 39 All. 549

——— **enhancement of—**

See RAILWAY PASSENGER.
I. L. R. 44 Calc. 279

SEPARATE CONVICTIONS.

See PENAL CODE ACT (XLV OF 1860), SS. 71, 147, 323.
I. L. R. 39 All. 623

SET-OFF.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. VIII, R. 6.
I. L. R. 41 Bom. 163

See CIVIL PROCEDURE CODE (1908), O. VIII, R. 6 . **I. L. R. 39 All. 362**

——— **equitable—**

See MORTGAGE . **I. L. R. 40 Mad. 683**

1. ——— *Limited Company—Right of shareholder to appropriate paid-up calls towards debt due from him to Company—Joint Stock Companies, Friendly Societies and Building Societies—Distinction between as to rule of set-off.* A shareholder, in a Permanent Benefit Fund with limited liability, who obtained a loan on executing a mortgage to the Fund which subsequently went into liquidation, is not entitled to appropriate by way of set-off his paid-up calls towards the mortgage-debt but is bound to pay the entire mortgage-debt before he can redeem the property. Principle of

SET-OFF—*concld.*

set-off in Court laid down in English decisions in the case of Joint Stock Companies and Friendly Societies as distinguished from Building Societies, applied. *In re Overend, Gurney & Co., Grissell's case, L. R. 1 Ch. App., 528, In re Paraguassu Steam Tramroad Company, L. R. 8 Ch. App. 254,* and *In re Hiram Maxim Lamp Company, [1903] 1 Ch. 70,* followed. *Brownlie* v. *Russell, 8 A. C., 235* and *Josh* v. *North British Building Society, 11 A. C., 489,* distinguished. THE MYLAPORE PERMANENT BENEFIT FUND, LTD. *v.* AROGIASWAMI PILLAI. (1916) . . **I. L. R. 40 Mad. 1004**

2. ——— A barred decree cannot on equitable grounds be set-off against a decerce under execution. MUNSAR ALI *v.* ABHOY CHARAN DAS (1917) . . . **21 C. W. N. 1147**

SHARES OF A LIMITED COMPANY.

See COMPANIES ACT (VII OF 1913), S. 38.
I. L. R. 41 Bom. 76

SHEBAIT.

——— **power of, to grant permanent lease**

See HINDU LAW—ENDOWMENT.
I. L. R. 40 Mad. 709

SHIPOWNER.

——— **liability of—**

See CHARTER-PARTY.
I. L. R. 41 Bom. 119

SIGNATURE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 59.
I. L. R. 41 Bom. 384

SIMPLE MORTGAGE.

See ADVERSE POSSESSION.
I. L. R. 44 Calc. 425

SINGLE JUDGE.

——— **order of—**

See APPEAL, RIGHT OF.
I. L. R. 44 Calc. 804

——— **revision by—**

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 816

SMALL CAUSE COURT.

See COMPENSATION.
I. L. R. 44 Calc. 87

See PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887), S 36.
I. L. R. 39 All. 357

——— *Jurisdiction of, to try suit for specific sum of money involving possible examination of accounts—Civil Procedure Code (Act V of 1908), rr. 6, 7, O. XLVI—Circumstances necessitating action under.* The plaintiff sued to recover from the defendant a certain aggregate amount made up by sums due on account of salary and house-rent as also money borrowed by the defendant. The plaint stated that if the correctness of the amounts was questioned the amount due may be determined on examination of the accounts. The suit was filed in the Court of the Munsif who returned the plaint for presentation to the Court of Small Causes where on being presented the plaint was returned on the ground that Court had no jurisdiction. The plaint on being again presented before the Munsif was returned a second time. *Held,* that a suit for the recovery of a specific sum

SMALL CAUSE COURT—*concld.*

of money does not assume the character of a suit for accounts merely because in the determination of the question in controversy accounts may have to be examined and the present was not a suit for accounts and was cognizable by the Court of Small Causes. That the Small Cause Court Judge instead of returning the plaint should have taken action under r. 6 or r 7, O. XLVI, and submitted the record to the High Court with a statement of his reasons for the doubt as to the nature of the suit. KSHETRA NATH BANERJI *v.* KALIDASI DASI (1916) . . . . **21 C. W. N. 784**

SMALL CAUSE COURT SUIT.

See CIVIL PROCEDURE CODE (1908), S. 24(*f*).
I. L. R. 39 All. 214

See CIVIL PROCEDURE CODE (1908), S. 115.
I. L. R. 39 All. 101.

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 8.
I. L. R. 41 Bom. 367

——— *Dismissal for default—Application for restoration of suit—Review—Civil Procedure Code (Act V of 1908), O. IX, rr. 4, 9; O. XLVII, r. 1—Provincial Small Cause Courts Act (IX of 1887), s. 17.* Where a Small Cause Court suit is dismissed for the plaintiff's default in the presence of the defendant, and an application made under O. IX, rr. 4 and 9 for the restoration of that suit is also dismissed for the plaintiff's default in the presence of the defendant's pleader, and where again an application is made under O. IX, r. 9, for the rehearing of the case and another application for treating it as an application for review : *Held,* that an application under O. IX r. 9, lay. O. XLVII, r.1, applied to all orders of the Court which may be reviewed under certain circumstances. *Held,* further, that the provisions of s. 17 of the Provincial Small Cause Courts Act did not apply to miscellaneous applications. *Deljan Nichha Bibee* v. *Hemant Kumar Ray, 19 C. W. N. 758,* followed. BIPIN BEHARI SHAHA *v.* ABDUL BARIK (1916) . **I. L. R. 44 Calc. 950**

SPECIFIC PERFORMANCE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54 . **I. L. R. 41 Bom. 438**

——— **partition and possession, suit for—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. I, R. 3.
I. L. R. 40 Mad. 365

SPECIFIC RELIEF ACT (I OF 1877).

——— **ss. 3, illus. (*g*), 12, 27—**

See TRANSFER OF PROPERTY ACT, S. 54.
I. L. R. 41 Bom 438

——— **s. 9—**

See CIVIL PROCEDURE CODE (1908), S. 11.
I. L. R. 39 All. 717

——— **s. 27 (*b*) and (*c*)—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. I, R. 3.
I. L. R. 40 Mad. 365

——— **ss. 39, 40, 45**—*Suit for declaration that an endorsement on a document was fraudulently obtained—Consequential relief not asked for. Held,* that a suit for the cancellation of an endorsement fraudulently obtained on a mortgage-deed is main

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

——— s. 39—*concld.*

tainable, inasmuch as it is a suit of the nature indicated by s. 39 of the Specific Relief Act. The endorsement, fraudulently obtained, is by itself a document and is similar to the several parts of a document indicated in s. 40 of the said Act. To such a suit section 42 of the Act does not apply. RAM CHANDAR *v.* GANGA SARAN (1916)

I. L. R. 39 All. 103

——— Ch. VI, s. 42—

COURT-FEE . **I. L. R. 44 Calc. 352**

——— s. 45—*University of Madras—Senate and the Syndicate, respective powers of—Regulation 64 of the Madras University Regulations providing for protests to Government, when ultra vires—Refusal of Syndicate to send protest to Government—Application for an order against Syndicate—Syndicate, a "public officer" protestor, "an injured person" and by-law, a "law for the time being" within s. 45—"Other specific and adequate remedy" in s. 45, meaning of—Substance and not form of protest and resolution, to be looked at.* In granting an application for an order under s. 45 of the Specific Relief Act filed by a Fellow of the Madras University against the Syndicate thereof for the purpose of compelling the Syndicate to forward to the Government a protest of his under Regulation 64 of the University Regulations against a resolution of the Senate. *Held*, under the Madras University Act of 1857 and the Indian Universities Act of 1904, that the Senate of the Madras University is the legislative and the Syndicate the executive government of the University. The scheme of the Acts is that general rules (called regulations) framed as to matters within the competence of the University are to be made by the Senate, in some cases with the sanction of the Government, and that the Syndicate's powers are purely executive and limited to the application of those rules to the facts and exigencies of particular cases as they arise. No sanction of Government is required for the Syndicate's application of the general rules made by the Senate and the Syndicate is entitled to make its own standing orders, and subject to the Regulations of the University, to regulate its business without the sanction of the Senate. The Syndicate can bring forward regulations for adoption by the Senate. Such being the relative powers of these two bodies, a power given to the University by s. 3 of the Universities Act VIII of 1904 to appoint University Professors and Lecturers and a specific power given by s. 25 of the Act to the Senate of the University to make regulations subject to the sanction of the Government for the appointment and duties of the University Professors and Lecturers are exercisable only by the Senate and not by the Syndicate. Such a power cannot be included within the administrative or ministerial powers of the Syndicate which it is competent to exercise without the approval of the Senate. A regulation or a proposal brought forward by the Syndicate in respect of such a matter for the approval of the Senate becomes on adoption by the Senate a regulation or a resolution of the Senate itself, and as such liable to be submitted for the approval of the Government. Being entitled to make regulations consistent with the Act, the Senate has power to make a regulation providing for a protest to Government, by a Fellow of the University against any resolution of the Senate in such a matter and if, under such a regulation, the Syndicate is liable eventually to submit the protest for the consideration and orders of the Government, the Syndicate has no power or discretion to refuse to send the protest, and the person protesting is on any such refusal entitled to obtain from the High Court an order in the nature of a mandamus compelling the Syndicate to submit the protest to the Government. *Held*, further, that the Syndicate of the Madras University is a statutory body of persons holding a "public office" within the meaning of s. 45 of the Specific Relief Act though no emoluments are attached to that office. Where a statute appoints a body of persons to carry out purposes of public benefit the persons constituting such a body *ipso facto* become holders of a "public office." The person protesting is entitled to the relief sought for, as an "injured" person within the meaning of s. 45 (*a*), even though there may be others equally entitled to protest in the same matter. The regulation of the Senate providing for the protest, being made under the powers given by the statute, has the force of law and it is "a law for the time being" within s. 45 (*b*). A regulation of the Senate providing for protests to Government in respect of all its resolutions will be *ultra vires* in respect of those which do not under the Act require the sanction for the Government. What in fact and substance is a resolution of the Senate amounting to a regulation passed after due notice, must be deemed to be so, however differently it may have been described. A document which in form and substance is a protest against a resolution is none the less a protest because it contains arguments against the validity of certain incidental matters leading to the passing of the resolution. The word "resolution" in Regulation 24, means only "regulation." *Per* KUMARASWAMI SASTRIYAR, *J.*—The proper course in applying for a mandamus against a statutory body is to take proceedings against the body as such in its official designation and not against each of the individuals composing the body. The fact that an applicant for a mandamus has other remedies, is no bar to its issue unless they amount to "other specific and adequate remedy" which means "equally convenient, speedy, beneficial and effectual remedy." "Other specific and adequate remedy" in s. 45 (*d*) relate to a *remedium juris* and not a remedy by the act of party. *In re* G. A. NATESAN AND K. B. RAMANATHAN (1916) . **I. L. R. 40 Mad. 125**

STAMP ACT (II OF 1899).

——— s. 2 (*10*), Sch. I, Art. 5, cl. (c)—

See HIRE-PURCHASE AGREEMENT.

I. L. R. 44 Calc. 72

——— s. 33 (*1*)—*Impounding of document insufficiently stamped—Conditions necessary for the application of section—Suit for money on hatchitta produced in Court in bound volume containing other hatchittas—Jurisdiction of Court to impound those other hatchittas.* In a suit for recovery of money on a *hatchitta*, the plaintiff filed along with the plaint the *hatchitta* which was in a bound volume which contained a large number of *hatchittas* executed by other persons in favour of the plaintiffs. The *hatchitta* on which the suit was brought being found to be insufficiently stamped, the Munsif examined the other *hatchittas* and impounded them under s. 33 of the Stamp Act finding them to be insufficiently stamped. *Held*, that under s. 33

STAMP ACT (II OF 1899)—*concld.*

———— **s. 33**—*concld.*

the Munsif had no jurisdiction to impound the *hatchittas* other than the one which formed the basis of the suit. Before action can be taken under sub-s. 1 of s. 33, it must be established that the instrument in question was produced or came before the officer mentioned therein in the performance of his functions and having regard to the stage at which the Munsif took action, it could not be said that the *hatchittas* were produced or came before the Munsif in the performance of his functions. SASHI MOHAN SHAHA *v.* KUMUD KUMAR BISWAS (1916) . . . **21 C. W. N. 246**

———— **s. 62 (b), (c)**—*Proposal for loan in prescribed form of Bank and approval thereof by Manager if constitutes an agreement which should bear eight annas stamp—Intent to defraud Government.* A certain local Bank received an application for a loan of Rs. 50 in its prescribed form. This application contained in the usual column of the form a sort of guarantee of payment by person other than the applicant recommending the granting of the loan on a bond and the Manager of the Bank approved the proposal or the loan and recommended it at a certain rate of interest as to which the Applicant and the guarantor were silent. Both the Manager and the Secretary of the Bank were prosecuted and the Manager was convicted under s. 62 (*b*) and the Secretary under s. 68 (*c*) of the Stamp Act. *Held*, that the statements in the proposal made by the Applicant himself and by the Manager did not represent a completed agreement, more particularly with regard to the rate of interest. At most they represented merely negotiations intended to lead up to the execution of a bond and the payment thereon of the amount of the loan, and the conviction of the Manager under s. 62 (*b*) of the Stamp Act could not be maintained. That the conviction of the Secretary under s. 68 (*c*) was also not sustainable as no intention to defraud Government was made out. RAJESHWAR BAGCHI *v.* KING-EMPEROR (1917) **21 C. W. N. 758**

———— **ss. 64 (c), 68—**

See STAMP-DUTY **I. L. R. 44 Calc. 321**

STAMP DUTY.

See HIRE-PURCHASE AGREEMENT. **I. L. R. 44 Calc. 72**

———— *Mere fact of putting a stamp not of proper value, whether an offence—Stamp Act (II of 1899), ss. 64, cl. (c), 68—Intention to defraud.* In construing cl. (*c*) of s. 64 of the Indian Stamp Act, the words "any other act" must be taken to mean an act of a like nature to those which are specified in cls. (*a*) and (*b*); and the mere fact that a person puts a stamp on a document which he knows to be not of proper value would not come within cl. (*c*) of s. 64, unless there is an intention to defraud the Government. *Queen-Empress* v. *Somasundaram Chetti, I. L. R. 23 Mad. 155*, referred to. CHHAKMAL CHOPRA *v.* EMPEROR (1916) . . . **I. L. R. 44 Calc. 321**

STATUTES.

———— **5 & 6 Geo. V, cap. LXI—**

———— **s. 107—**

See CIVIL PROCEDURE CODE (1908), s. 115 . . **I. L. R. 39 All. 254**

STATUTES, CONSTRUCTION OF.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 93. **I. L. R. 40 Mad. 1009**

STAY OF PROCEEDINGS.

———— **against an insolvent—**

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), s. 18 (*3*). **I. L. R. 41 Bom. 312**

STRAITS SETTLEMENTS BANKRUPTCY ORDINANCE.

See BANKRUPTCY. **I. L. R. 40 Mad. 581**

STREET.

———— **vesting of—**

See MUNICIPALITY. **I. L. R. 44 Calc. 689**

STRIDHANA.

———— **non-technical—**

See HINDU LAW—STRIDHAN. **I. L. R. 41 Bom. 618**

SUBSTITUTION OF NAMES.

See CIVIL PROCEDURE CODE (1908), O. XXII, R. 4 . **I. L. R. 39 All. 551**

SUCCESSION.

See CUSTOM . **I. L. R. 39 All. 574**

See HINDU LAW—STRIDHAN. **I. L. R. 41 Bom. 618**

See HINDU LAW—WIDOW. **I. L. R. 39 All. 1**

SUCCESSION ACT (X OF 1865).

———— **ss. 7, 9, 10**—*Domicile—Domicile of origin—Domicile of choice—Domicile of origin acquired from parents at birth—Domicile of choice acquired from residence and intention that residence should be permanent—Change of residence per se for an indefinite period does not effect domicile of choice—Domicile of choice discarded by intention to abandon accompanied by actual abandonment—Declarations of a party abandoning domicile, how far relevant—Domicile of origin reviving prorio vigore on abandonment of domicile of choice—Onus of proof.* One P. P., a Native Christian, was born in Goa of parents domiciled in Goa, in Portuguese Territory. In 1858, at the age of fourteen, he came out to Bombay and lived there uninterruptedly, with the exception of brief visits to Goa, till his death in June 1915, when he was seventy-one years old. In 1871, he married his first wife, the mother of the defendants Nos. 1 to 3, and on her death in 1901 married the plaintiff in 1903. During the whole of his mature life in Bombay he carried on a flourishing coach-building business, providing himself with a house near his factory. From his conduct and declarations from time to time it appeared that he had settled in Bombay meaning it to be his fixed habitation. It also appeared that some time after 1913, and shortly before his death he formed an intention of returning to Goa and end his days there. On the 26th July 1909, he made a will in Bombay whereby he gave a legacy of Rs. 7 a month to the plaintiff, if she chose to live separate from the defendant No. 1, a legacy of Rs. 500 to the defendant No. 3, and the coach-building factory to the defendant No. 4, the minor son of defendant

SUCCESSION ACT (X OF 1865)—*contd.*

——— **s. 7**—*contd.*

No. 1. He appointed defendant No. 1, the sole executor and residuary legatee. The entire moveable property belonging to him in his own right was valued by the plaintiff for Rs. 71,000, and by the defendant No. 1 for Rs. 19,000. The plaintiff disputed the will of her husband and contended that the deceased had Portuguese domicile at the time of his marriage with her in 1903, as well as at his death, and that under the Portuguese law she was entitled to a moiety of the estate left by the deceased. The defendant No. 3 who supported the plaintiff contended that in 1871, when the deceased married his mother the deceased had a Portuguese domicile, and that he too became entitled to a share in the estate of the deceased under the Portuguese law. *Held*, (i) that at any time between 1865 when the deceased had attained majority and 1913, the deceased had acquired a domicile of choice in Bombay in substitution for the domicile of his origin in Goa; (ii) that in spite of the intention of the deceased to return to the domicile of his origin, the domicile of choice continued in law to exist at his death, as the intention was not accompanied by the actual abandonment of the domicile of choice; (iii) that the making of the will and all other matters governed by the Indian law of succession must be determined as though the deceased had all along, from the year 1865 to the time of his death, been a British subject domiciled in Bombay; (iv) that the claim put forward by the plaintiff or the defendant No. 3 was not maintainable as the devolution of the estate of the deceased was not governed by the law of Portugal. The domicile of origin is that which a person acquires at his birth from his parents and follows the domicile of his parents. It is not necessarily in itself local, that is to say, merely the place of birth. The domicile of origin once ascertained in law clings and adheres to the person until he chooses to divest himself of it by substituting a domicile of choice for the domicile of origin. The domicile of choice is acquired by a combination of fact with intention. The fact is residence and the intention is that the residence should be permanent. The domicile of choice can be discarded as easily as it can be acquired by a fact and an intention, namely, the fact of abandoning the residence accompanied by the intention that that abandonment shall be final, and that upon any such mere abandonment of one domicile of choice without the acquisition of another, the domicile of origin revives *proprio vigore* and without the need of any further act or intention on the part of the person. The law leans very strongly in favour of the retention of the domicile of origin. Where there are no declarations of intention either way, the Courts would be slow to infer from the mere fact of residence however protracted that residence may be, the intention requisite to complete the substitution of domicile of choice for that of origin. The onus being upon the person alleging that a man has acquired a domicile of choice, he must prove to the Court that that man had that intention. A man having acquired a domicile of choice may after many years decide to abandon his domicile of choice and again accept his domicile of origin. But if with that intention clear in his mind he should fail actually to abandon his domicile of choice and die before thus far giving effect to his intention the result would be that the domicile of choice would persist and the distribution of his estate would be governed by it. The law of domicile in the Courts of England from the case of *Bruce* v. *Bruce*, 2 *Bos. & P. 229*, footnote, to that of *Huntly* v. *Gaskell*, [*1906*] *A. C. 56*, considered. SANTOS *v.* PINTO (1916) . . **I. L. R. 41 Bom. 687**

SUCCESSION ACT (X OF 1865)—*concld.*

——— **s. 7**—*concld.*

——— **s. 50**—*Will of a marksman—Mark not affixed by the testator himself but by another, not a due execution—Absence of two attesting witnesses besides the person affixing the mark, not a due attestation.* Where with a view to execute a will the testator, who was a marksman, touched the pen and gave it to another who affixed to the will a mark and wrote against it the testator's name and added beneath it his own name as the person who affixed the mark, and the will did not contain attestations of two *other* persons besides that of the person so affixing the mark. *Held*, that the will was invalid as not complying with the provisions of s. 50 of the Indian Succession Act. As a *marked* will, it was invalid, as the mark was not affixed by the testator himself, as required by the section. Considered as a *signed* will as it might be, it was equally invalid as the testator's signature was put by another and there were not two *other* attestors besides the one so signing. RADHAKRISHNA *v.* SUBRAYA (1916) . **I. L. R. 40 Mad. 550**

SUDRAS.

See YATI . **I. L. R. 40 Mad. 846**

SUFFICIENT CAUSE.

See APPEAL . **L. R. 44 I. A. 218**

SUIT.

——— **dismissal of—**

See CIVIL PROCEDURE CODE (1908), O. V, R. 3: O. IX, R. 12.
I. L. R. 39 All. 476

——— **for account—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 116 . **I. L. R. 39 All. 355**

——— **for dissolution of partnership—**

See CIVIL PROCEDURE CODE (1908), O. XXII, R. 4.
I. L. R. 39 All. 551

——— **for joint possession—**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 138, 144.
I. L. R. 39 All. 460

——— **for judicial separation—**

See CIVIL PROCEDURE CODE (1908), S. 83.
I. L. R. 39 All. 377

——— **for money had and received—**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 29, 36, 120.
I. L. R. 39 All. 322

——— **for possession and mesne profits—**

See LIMITATION ACT, 1908, SCH. I, ART. 109 . . **I. L. R. 39 All. 200**

——— **for profits—**

See CIVIL PROCEDURE CODE (1908), XXVI, RR. 9, 16, 17, 18.
I. L. R. 39 All. 694

SUIT—*concld.*

———— for redemption of mortgage—

See COURT-FEE . **I. L. R. 39 All. 452**

———— for refund of purchase money—

See CIVIL PROCEDURE CODE (1908), O. XXI, RR. 92, 93. **I. L. R. 39 All. 114**

———— place of—

See CIVIL PROCEDURE CODE (1908), S. 20. **I. L. R. 39 All. 368**

———— to set aside a decree on the ground of fraud—

See CIVIL PROCEDURE CODE (1908), S. 20 (*c*) . **I. L. R. 39 All. 607**

———— valuation of—

See CIVIL PROCEDURE CODE, S. 115. **I. L. R. 39 All. 723**

SUITS VALUATION ACT (VII OF 1887).

———— s. 8—

See ADMINISTRATION SUIT. **I. L. R. 44 Calc. 890**

SURETY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXVIII. R. 5, SS. 115, 145. **I. L. R. 41 Bom. 402**

See FITNESS OF SURETY, GROUNDS OF. **I. L. R. 44 Calc. 737**

———— for insolvent's debt, whether, "creditor"—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 37. **I. L. R. 40 Mad. 783**

———— liability of—

See PRINCIPAL AND SURETY. **I. L. R. 44 Calc. 978**

———— *Grounds of fitness—Pecuniary sufficiency—Inability of control—Discretionary power of the Court on the facts of each case—Propriety of the order—Criminal Procedure Code (Act V of 1898), s. 122.* The question as to the fitness of a surety is one of discretion in each case, and the High Court has only to consider whether the order of the Magistrate is reasonable and proper in the circumstances of the particular case. *Jalil* v. *Emperer, 13 C. W. N. 80, Jafar Ali Panjalia* v. *Emperor, I. L. R. 37 Calc. 446,* and *Emperor* v. *Asiraddi Mandal, I. L. R. 41 Calc. 764,* approved. *Ram Pershad* v. *King-Emperor, 6 C. W. N. 593, Adam Sheikh* v. *Emperor, I. L. R. 35 Calc. 400,* and *Rayan Khan* v. *Emperor, I. L. R. 43 Calc. 1024,* not followed. ABDUL KARIM *v.* EMPEROR (1916) **I. L. R. 44 Calc. 737**

SYNDICATE AND SENATE.

———— respective powers of—

See SPECIFIC RELIEF ACT (I OF 1877), S. 45 . . **I. L. R. 40 Mad. 125**

T

TALABI BRAHMOTTAR.

See GRANT . **I. L. R. 44 Calc. 585**

TALAB-I-ISHHAD.

See MAHOMEDAN LAW—PRE-EMPTION. **I. L. R. 41 Bom. 636**

TALAB-I-MOWASIBAT.

See MAHOMEDAN LAW—PRE-EMPTION. **I. L. R. 41 Bom. 636**

TALUKDAR.

———— mortgage by—

See BROACH AND KAIRA INCUMBERED ESTATES ACT (XXI OF 1881), S. 28. **I. L. R. 41 Bom. 546**

TEMPLE.

———— right to perform festival in a—

See HINDU LAW—CUSTOM. **I. L. R. 40 Mad. 1108**

———— rights of management of—

See PARTITION . **I. L. R. 39 All. 651**

TEMPLE COMMITTEE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 40 Mad. 212**

———— vacancy in—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863), S. 10. **I. L. R. 40 Mad. 793**

TENANCY.

———— *Tenancy created by lease—Right of person not party to contract holding under lease to show that purpose of tenancy was different. Held, per* N. R. CHATTERJEA, *J.*—That although where it is shown by a lease unambiguous in its terms that the land was originally acquired by the tenant for cultivating it by himself or by hired servants or by members of his family the character of the tenancy is not altered by the mere fact that the land was subsequently let out to tenants and although in such a case the land may as between the lessor and the lessee be taken to have been acquired for the purpose as stated in the lease itself, it is certainly open to a person who is no party to the contract to show that the real purpose for which the land was acquired by the lessee was other than what was stated in the lease. RAJANI KANTHA MUKHERJEE *v.* YUSUF ALI (1916) . . . . **21 C. W. N. 188**

TENANCY-AT-WILL.

———— *Yearly rent reserved—Lease, whether by registered instrument only—Transfer of Property Act (IV of 1882), s. 107.* Section 107 of the Transfer of Property Act does not lay down that a lease of immoveable property can be made only by a registered instrument but it can be made only by a registered instrument in three cases, *viz.*, (*i*) a lease from year to year, (*ii*) a lease for any term exceeding one year, and (*iii*) a lease reserving a yearly rent. The fact that the rent is reserved at so much a year does not conclusively show that the tenancy is from year to year. The terms of a tenancy which does not come within s. 107 of the Transfer of Property Act can be proved by oral evidence. *Lala Surabh Narain Lal* v. *Catherine Sophia, 1 C. W. N. 248, Fazel Sheikh* v. *Keramuddi Sheikh, 6 C. W. N. 966, Sita Nath Pal* v. *Kartick Gharmi, 8 C. W. N. 434,* and *Venkatagiri Zamindar* v. *Raghava,*

TENANCY-AT-WILL—*concld.*

I. L. R. 9 Mad. 142, referred to. SARAT CHANDRA DUTT *v.* JADAB CHANDRA GOSWAMI (1916)
I. L. R. 44 Calc. 214

TENANT.

——— **liability of, to pay compensation for loss of crops—**

See ESTATES LAND ACT (MAD. ACT I OF 1908), SS. 4, 27, 73 AND 143.
I. L. R. 40 Mad. 640

——— **right of—**

See IRRIGATION CHANNEL
I. L. R. 40 Mad. 640

TENURE.

——— *whether permanent or temporary—Tenancy held by original grantee or his successor in interest for 70 years under four doul kabuliyats for terms—"Sarasari" whether applies to rent only or tenure itself—Fact or law, question of—Construction.* In a suit by the landlord, under s. 106, Bengal Tenancy Act, for correction of an entry that the tenancy of the defendants was a permanent tenure, four *doul kabuliyats* were relied upon to prove the contract of tenancy, bearing dates 1250, 1277, 1285 and 1295 B. S. All these were for terms of years, and they did not contain the words "from generation to generation." But the successive settlements were either with the original tenant or his heir, the oral evidence being to the effect that the dead man's heir was recognised as having a moral claim to succeed to his rights. All the *kabuliyats* bound the tenant to keep the trees intact and restrained him from making transfer of the land, the last three adding that he must not partition the land, and providing for the landlord's right of re-entry in the event of the tenant not entering into a fresh arrangement. They also spoke of the tenancy as *sarasari* (temporary). The lower Appellate Court upon these materials held that the tenure was considered by the landlord to be heritable, that it was permanent but not transferable and that the rent was liable to enhancement: *Held*, on second appeal, that the question whether the tenure was permanent or not was not merely one of fact. That at any rate it depended to a large extent on the construction of the *kabuliyats*, the question, for instance, whether the word "*sarasari*" referred to the variability of the rent or the nature of the tenancy being one of construction. That the tenure was neither permanent nor heritable. *Per* WALMSLEY, *J.*—The tenant who claims a hereditary right under a document which does not contain the words "from generation to generation" has a heavy onus to discharge. That the temporary character of the tenancy was not limited only to the amount of rent. That repeated renewals of an agreement do not change its character and regard should be had to the later rather than the earlier *kabuliyats*, and the fact that during a period of 70 years only four *kabuliyats* were passed and the settlement made again and again with the same man or his successor in interest did not alter the nature of the agreement. PRODYOT KUMAR TAGORE *v.* SARAT CHANDRA DAS (1917) . . . . . **21 C. W. N. 809**

TERMINATION OF SERVICE

See SCHOOL-MASTER
I. L. R. 44 Calc. 917

THEATRICAL PERFORMANCE.

——— *Keeping open a theatre after prescribed hour—Joint proprietors, liability of—Penalty for offence or on offender—Calcutta Municipal Act (Beng. III of 1899), ss. 559 (52), 561—Bye-laws 83 and 85—Validity of bye-law 85.* Bye-law 85 framed under s. 559 (*52*) of the Calcutta Municipal Act (Beng. III of 1899) is not *ultra vires* by reason of s. 561 thereof, and each of the joint proprietors of a theatre is liable to a fine to the extent of Rs. 20 for keeping it open after 1 A.M., in contravention of bye-law 83. *Amrita Lall Bose* v. *Corporation of Calcutta, 21 C. W. N. 1009*, overruled. *Reg.* v. *Showdar Ghenar, 7 Bom. H. C. R. 39*, distinguished. *Rex* v. *Clark, 2 Cowp. 610. Queen* v. *Littlechild, L. R. 6 Q. B. 293*, referred to. *Per* MOOKERJEE, *J.*—As a general principle of criminal law, all who participate in the commission of an offence are severally responsible, as though the offence had been committed by each of them acting alone; consequently each must be separately punished. AMRITA LAL BOSE *v.* CORPORATION OF CALCUTTA (1917)
I. L. R. 44 Calc. 1025

THEFT.

See LURKING HOUSE-TRESPASS
I. L. R. 44 Calc. 358

——— *Dishonest intent—Bonâ fide claim of right to property, or mere pretence—Proper question for consideration by the Criminal Courts—Criminal trespass—Evidence of complainant's possession, illusory—Penal Code (Act XLV of 1860), ss. 379, 447.* The removal of property in the assertion of a *bonâ fide* claim of right, though unfounded in law and fact, does not constitute theft. But a mere colourable pretence to obtain or keep possession of property does not avail as a defence. Whether the claim is *bonâ fide* or not must be determined upon all the circumstances of the case, and a Court ought not to convict unless it holds that the claim is a mere pretence. *Rex* v. *Hall, 3 C. & P. 409, Reg.* v. *Wade, 11 Cox. 549, Rex* v. *Jenner, 7 L. J. M. C. (O. S.) 79, Reg.* v. *Leppard, 4 F. & F. 51, Nassib Chowdhry* v. *Nannoo Chowdhry, 15 W. R. Cr. 47, Runnoo Singh* v. *Kali Churn Misser, 16 W. R. Cr. 18, Mahomed Jan* v. *Khadi Sheik, 16 W. R. Cr. 75, Khetter Nath Dut* v. *Indro Jalia, 16 W. R. Cr. 78, Empress* v. *Budh Singh, I. L. R. 2 All. 101, In re Madhab Hari, I. L. R. 15 Calc. 390n, Pandita* v. *Rahimulla Akundo, I. L. R. 27 Calc. 501, Emperor* v. *Sabalsang, 4 Bom. L. R. 936, Algarasawmi Tevan* v. *Emperor, I. L. R. 28 Mad. 304, Hari Bhuimali Emperor, 9 C. W. N. 974*, followed. *Held*, upon the facts, that even if the accused had failed to establish his title and possession to the land, it was a case of a *bonâ fide* dispute, and that the conviction of theft was bad. ARFAN ALI *v.* EMPEROR (1916)
I. L. R. 44 Calc. 66

TIME-BARRED DEBT.

See HINDU LAW—ALIENATION.
I. L. R. 41 Bom. 347

TITLE.

See CHAUKIDARI CHAKARAN LANDS.
I. L. R. 44 Calc. 841

See PUBLIC DRAIN.
I. L. R. 44 Calc. 689

——— **proof of—**

See VENDOR AND PURCHASER.
I. L. R. 41 Bom. 30

TITLE—*concld.*

——————— *Grantor and Grantee —Bengal Tenancy Act (VIII of 1885), s. 85, sub-s. (1), construction of—Contravention of the section, effect of—Estoppel, its application.* The title of a grantee who can fall back upon prior possession as tenant or otherwise, cannot be defeated by mere proof of contravention of s. 85 of the Bengal Tenancy Act and as between grantor and grantee, the rule of estoppel applies when the elements essential to attract its operation are proved to exist. The creation of complete relation of landlord and tenant in law estops the tenant from denying the validity of the title which he has admitted to exist in the landlord. The estoppel arises not by reason of some fact agreed or assured to be true, but as the legal effect of carrying the contract into execution, of the tenant taking possession of the property from the hand of the lessor. *Bhaiganta Bewa* v. *Himmat Bidyakar* followed, *24 C. L. J. 103.* It is no more open to the defendant than to the plaintiff to prove facts contrary to the allegations which formed the basis of the contract, after the contract has been carried into execution and the contracting parties have enjoyed benefits thereunder. *Madan* v. *Jaki, 6 C. W. N. 377, Gopal Mondal* v. *Eshun Chunder Banerjee, I. L. R. 29 Calc. 148, Tamijuddi* v. *Asgar Howladar, I. L. R. 36 Calc. 256, Janakinath* v. *Prabhasini, 22 C. L. J. 99, Lani* v. *Muhammad, 20 C. W. N. 948, Gonesh* v. *Thanda, 24 C. L. J. 539,* referred to. BAMANDAS BHATTACHARJEE *v.* NILMAHADAB SAHA (1916)

I. L. R. 44 Calc. 771

TOWNS NUISANCE ACT (MAD. III OF 1889).

——————— **s. 3** *(10)*—"*Gaming*" *and* "*public place,*" *meaning of.* The accused in this case held for stakes a game called "Ring" in an open space in the compound of a Hindu temple. In convicting the accused under s. 3 *(10)* of the Madras Towns Nuisance Act (III of 1889), on the grounds that the place was a public place and the game was a game within the meaning of the above section as it was played for stakes. *Held:* (*a*) "Gaming," generally and in s. 3 *(10)* means "playing for stakes;" (*b*) a public place is one where the public go whether they have a right to or not; it is sufficient to constitute a place a public one even if only a section of the general public such as Hindus have a right to go to it; and (c) the character of the game as one of skill or chance is not material under the section. *Hari Singh* v. *Jadu Nandan Singh, I. L. R. 31 Calc. 542,* followed. KING-EMPEROR *v.* MUSA (1916)

I. L. R. 40 Mad. 556

TRADE-NAME, INFRINGEMENT OF.

——————— *Manufacturers of cloth affixing numbers on pieces sold—Cloth known by the numbers affixed as being of a particular manufacture—Numbers, not quality marks—Agents and middlemen ordering out goods by numbers alone —Use of numbers protected, when they are particular marks of a manufacturer's goods—Numbers, when a trade name—Cases of actual deception not necessary.* The plaintiffs were manufacturers of cloth on a large scale at their Mills in Nagpore, Central Provinces. In the year 1904, they commenced to manufacture a certain quality of black twill and to distinguish this particular cloth from all other cloths of their manufacture stamped on each piece of cloth the No. 2051 and immediately below that number stamped each piece with the

TRADE-NAME, INFRINGEMENT OF—*concld.*

No. 10 which denoted the colour and shade of the cloth. There was also on each piece of cloth a woven device of a serpent surrounded by a scroll containing the name of the Empress Mill. This twill had acquired a great reputation in the Indian markets and particularly in Sindh, the North-West Frontier Provinces, and the Punjab, where the plaintiffs had got their selling agents at Amritsar, Peshawar and Karachi. The dealers in these towns and other smaller towns would apply to the selling agents for the plaintiffs' cloth and the cloth would be distributed by these dealers to smaller dealers in smaller towns and villages and so on until it ultimately found its way to the consumer. In or about July 1913, the defendants began to manufacture black twill cloth and on every piece of such twill put on the No. 2051 with the No. 10 below in the same position as No. 10 stamped on the plaintiff's cloth. In addition the defendants annexed a label thereto representing an image of the Sun known as the 'Sooraj Chap' or Sun label and also a white ticket bearing the defendant company's name and other particulars in English, Gujarathi and Urdu languages. The plaintiffs alleged that by the year 1913 their No. 2051 had become identified with their goods and any black twill cloth stamped with the No. 2051 would be ordinarily taken by purchasers as being the well-known No. 2051 cloth of the plaintiffs and would be very likely passed off by rival companies as being the plaintiffs' goods. The plaintiffs contended that they were entitled solely to the use of the No. 2051 on their black twill and the use of that number by the defendants on a similar twill constituted an infringement of their rights. The plaintiffs accordingly sought to restrain the defendants by injunction from selling their black twill cloth with the No. 2051 stamped on it, and for an account of the profits made by the defendants by the sale of their black twill with the No. 2051 stamped on it. The defendants pleaded that the No. 2051 was merely a quality mark descriptive of goods and was so adopted by several dealers in black twill. They further relied on the fact that they had taken particular care to distinguish their goods from those of the plaintiffs by using different labels and devices. The trial Court decreed the plaintiffs' claim for injunction and account. On appeal by the defendants, *held* (*i*) that the plaintiffs having established that the particular No. 2051 was an invariable indication of the cloth being of their manufacture, they were entitled to claim an exclusive right to the user of that number in connection with the black twill which they put on the market. *Barlow* v. *Govindram, I. L. R. 24 Calc. 364,* distinguished, *Wotherspoon* v. *Currie, L. R. 5 H. L. 508,* and *Birmingham Vinegar Brewery Company* v. *Powell,* [1897] *A. C. 710,* followed, (*ii*) that it was not necessary for the plaintiffs to prove cases of actual deception, if the defendants had put into the hands of middlemen a means whereby ultimate purchasers were likely to be defrauded. *Singer Manufacturing Company* v. *Loog, 18 Ch. D. 395, 412,* and *Lever* v. *Goodwin, 36 Ch. D. 1,* followed. MADHAVJI DHARMASEY MANUFACTURING CO. *v.* THE CENTRAL INDIA SPINNING, WEAVING AND MANUFACTURING CO. (1916) . . . **I. L. R. 41 Bom. 49**

TRADE-USAGE.

See JUTE . **I. L. R. 44 Calc. 98**

TRADING LICENSES.

———— granted to hostile firms—

See CONTRACT WITH ALIEN ENEMY.
I. L. R. 41 Bom. 390

TRADING WITH THE ENEMY.

———— *Attempting to trade with enemy—Commercial Intercourse with Enemies Ordinance (VI of 1914), s. 3. "Obtaining" in ss. 5 (7) and 5 (9) of the Royal Proclamation, meaning of—Penal statutes, generally not retrospective.* The accused, a trader in Madras, dealing in tobacco, cabled on 28th July 1914, to one Ruppell, a German, residing in Germany, for certain bales of tobacco. In compliance with this order, Ruppell sent to certain agents of the accused at Amsterdam some bales of tobacco about the end of September 1914, and these agents again shipped them on 7th October 1914 to Messrs. Lancelot and Dent, the agents of the accused in London. Having received the same before the 14th October 1914, the London agents reshipped them to the accused who received the same in Madras between the 21st and 26th November 1914. War was declared between England and Germany on 4th August 1914. A Royal Proclamation prohibiting trade with the enemy was made on 9th September 1914 and an Ordinance [Commercial Intercourse with Enemies Ordinance VI of 1914] to the same effect was passed on 14th October 1914, and it came into force on that day. On these facts, the accused was charged and convicted by a Magistrate of the offence of *trading with the enemy* under s. 3 of the Commercial Intercourse with Enemies Ordinance VI of 1914 on the ground that *he obtained in Madras* between 21st and 26th November 1914, goods *from an enemy and from an enemy country*. He was also convicted by the Magistrate of the offence of *attempting to trade with the enemy* under the same section, writing two letters on 26th November 1914, one to a neutral subject in Holland and another to an enemy in Germany, requesting them to secure for him his merchandise in Germany: *Held* on the second charge, that the accused was guilty of *attempt to trade*, even if the goods in the enemy's country became his own before the outbreak of the war or even if there were no goods of his there at the time he wrote the letters. *Reg.* v. *Ring*, *61 L. J. (N. S.) M. C. 116*, and *Reg.* v. *Oppenheimer and Colbeck*, [*1915*] *2 K. B. 755*, followed. *Held* on the first charge, that the conviction could not be sustained, as the charge was not proved as laid. *Per* WALLIS, *C. J.*—The charge of trading is bad for two reasons:—(*i*) the ordering or procuring was before the 14th of October 1914, the date when the Ordinance came into force, and (*ii*) even this procuring was in London by the accused's agents, an offence which Courts in India have no jurisdiction to try. *Semble:* Trading with the enemy is a Common Law offence in England, if not in India also. The Royal Proclamation and the Ordinance have no retrospective effect. The words "obtaining goods" in their ordinary meaning include "procuring or ordering goods" as well as "taking delivery of them on arrival." *Per* COUTTS TROTTER, *J.*—The offence committed, if any, was one of obtaining goods by way of transmission under the latter part of s. 5 (7) of the Royal Proclamation, an offence with which the accused was not charged. *Semble:* Trading with the enemy is a Common Law offence both in England and in India. *Obiter:* A person may be

TRADING WITH THE ENEMY—*concld.*

guilty of illegally obtaining goods twice, once through his agents and thereafter by himself. It is no defence to the charge of obtaining goods under the Ordinance that some acts constituting the offence took place before the date of the Ordinance. *Reg.* v. *Griffiths*, [*1891*] *2 Q. B. 145*, referred to. The charge of trading having failed, their Lordships refused in the circumstances of the case to amend the charge into one of obtaining goods by way of transmission under the latter portion of section 5 (7) of the Royal Proclamation. HOOPER *v.* KING-EMPEROR (1916)
I. L. R. 40 Mad. 34

TRANSFER.

See FRAUDULENT TRANSFER.

JURISDICTION OF HIGH COURT.
I. L. R. 44 Calc. 595

See TRANSFER OF A MAGISTRATE.
I. L. R. 40 Mad. 108

TRANSFER OF A MAGISTRATE.

———— who has written but not delivered judgment—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 367.
I. L. R. 40 Mad. 108

TRANSFER OF PROPERTY ACT (IV OF 1882).

———— applicability of, to Crown lands—

See LEASE . **I. L. R. 40 Mad. 910**

———— ss. 2, 54—

See LAND REVENUE CODE (BOM. ACT V OF 1879), S. 74.
I. L. R. 41 Bom. 170

———— ss. 6, 58—*Maha Brahmin—Mortgage by, of right to receive dues of office.* There is nothing in the law to prevent a *Maha Brahmin* mortgaging his right to offerings receivable by him in his professional capacity. *Raghoo Pandey* v. *Kassy Parey*, *I. L. R. 10 Calc. 73*, referred to. SUKH LAL *v.* BISHAMBHAR (1916)
I. L. R. 39 All. 196

———— s. 7—

See MINOR . **I. L. R. 40 Mad. 308**

———— s. 43—*Estoppel, feeding of, by after-acquired property, when transferor had no title at date of transfer—Principle, if applies to "Hindu conveyances."* The observation in *Dooly Chand* v. *Birj Bookun Lal Awasti*, *10 C. L. R. 61*, *6 C. L. R. 528*, that the principle of English law which allows a subsequently acquired interest to feed on estoppel does not apply to Hindu conveyances was treated as *obiter* and, held, that when a grantor of a lease, by a recital, is shown to have stated that he is seised of a specific estate, and the Court finds that the parties proceeded upon the assumption that such an estate was to pass, an estate by estoppel is created between the parties and those claiming under them, in respect of any after-acquired interest of the grantor, the newly acquired title being said to feed the estoppel. The principle is not inapplicable to a case where there was originally no title at all and is not confined in its application to cases where there is an enlargement of an existing interest. KRISHNA CHANDRA GHOSH *v.* RASIK LAL KHAN (1916)
21 C W N. 218

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— ss. 51, 54, 118—

See ESTOPPEL BY CONDUCT.

I. L. R. 40 Mad. 1134

——— s. 52—*Lis Pendens— Attachment before judgment—Claim to attached property by third party, allowed—Suit by decree-holder against claimant to establish his right to attach—Suit dismissed—Appeal by decree-holder—Judgment-debtor, not a party to suit or appeal—Sale in execution of another decree by another decree-holder pending appeal—Decree on appeal—Subsequent sale in execution—Validity of prior sale.* A decree-holder had attached the property of his judgment-debtor before decree in his suit, and, while he was seeking to establish his right to attach and sell such property as the property of his judgment-debtor by suit against a successful claimant, another decree-holder attached the same property and brought it to sale during the pendency of the appeal in the claim suit. The judgment debtor was not made a party to the claim proceedings or the subsequent suit or appeal. The property was again sold in execution of the decree of the former decree-holder who purchased it and sued to recover possession: *Held*, that the auction purchaser in the prior sale was not affected by the doctrine of *lis pendens* and his purchase was valid as against the purchaser in the subsequent auction sale. *Per* WALLIS, *C. J.*—The doctrine of *lis pendens* was inapplicable on the ground that the judgment-debtor was not a party to the claim proceedings or the subsequent suit and could not be considered to be represented in that suit by the plaintiff therein. *Lala Mulji Thakar* v. *Kaski Bai, I. L. R. 10 Bom. 400*, referred to. Even if the judgment-debtor was a party thereto, there is no *lis pendens* as the doctrine of *lis pendens* applies only to alienations which are inconsistent with the right which may be established by the decree in the suit: here as the sale in execution proceeded on the very footing that the property belonged to the judgment-debtor, the doctrine is inapplicable. *Per* NAPIER, *J.*—The doctrine of *lis pendens* does not apply as the judgment-debtor was not actually or constructively a party to the claim suit. *Phul Kumari v. Ghanshyam Misra, I. L. R. 35 Calc. 202*, explained. *Krishnappa Chetty v. Abdul Khader Sahib, I. L. R. 38 Mad. 535*, dissented from. PETHU AYYAR *v.* SANKARANARAYANA PILLAI (1916) . . . **I. L. R. 40 Mad. 955**

——— s. 53—

See ATTACHMENT.

I. L. R. 44 Calc. 662

——— *Mortgage in fraud of creditors.* The first defendant mortgaged two properties, *viz.*, a parcel of land and a hut on a second parcel to the plaintiff. Subsequent to the mortgage the second defendant, a creditor of the first defendant, purchased the hut in execution of a decree for money obtained by him against the first defendant prior to the mortgage. In a suit by the plaintiff to enforce the mortgage security the lower Appellate Court made a decree for realisation of the mortgage money by sale of the first property alone although it found that at the date of the mortgage which was for an antecedent loan and an alleged cash payment which was not proved, the plaintiff was not aware of the decree

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— s. 53—*concld.*

obtained by the second defendant nor of its impending execution against the first defendant, and that there was no evidence to show that there were other creditors of the mortgagor at the time of the mortgage transaction who were intended to be defrauded or defeated: *Held*, that the facts found were not sufficient to bring the case within the scope of s. 53 of the Transfer of Property Act. That even assuming the mortgage to be within the mischief of s. 53, the second defendant was under that section which rendered the transaction only voidable at the option of the person defrauded entitled to question the mortgage only in so far as it affected the property acquired by him, and therefore the Court's order directing the sale of the first property was not open to exception. That the Court in proceeding to grant relief by way of avoidance of the transaction would do so only on equitable consideration and would apply the principles of justice, equity and good conscience, and as it appeared that the second defendant acquired the hut subject to the lien of the plaintiff, he should be granted relief only on condition that he satisfied the lien. The plaintiff was therefore entitled to a decree for his dues also as against the second property in the hands of the second defendant. KRISHNA KUMAR NANDY *v.* JAI KRISHNA NANDY (1915) . **21 C. W. N. 401**

——— s. 54—

See MORTGAGE . **I. L. R 44 Calc. 542**

1. ——— *Agreement for sale of immoveable property—Possession taken under the agreement—No registered conveyance—Suit by vendor to recover possession—Agreement for sale, whether a valid defence to the suit—Agreement capable of specific enforcement at the date of the suit—Specific Relief Act (I of 1877), s. 3, Illustration (g) and ss. 12 and 27—Indian Trusts Act (II of 1882), ss. 41, 95.* Where the plaintiff being the owner of certain immoveable property seeks to recover possession of that property and there are no facts operating to his prejudice, it is a valid defence to the suit that the plaintiff has agreed to sell the property to the defendant, the agreement being at the date of suit still capable of specific enforcement, but there being no registered conveyance passing the property to the defendant, who has taken possession under the agreement for sale and is willing to perform his part of it with the plaintiff. BAPU APAJI *v.* KASHINATH SADOBA (1917) . . . **I. L. R. 41 Bom. 438**

2. ——— *Indian Registration Act (XVI of 1908), ss. 17, 50—Sale of land below Rs. 100 in value by unregistered deed of sale and delivery of possession—Sale valid on proof of sale and delivery of possession—Secondary evidence of unregistered deed of sale, whether admissible.* On the 10th May, 1899, defendant No. 1 sold the land in dispute to the plaintiff's father for Rs. 40, and delivered possession thereof to him. At the same time defendant No. 1 executed a sale deed in favour of the plaintiff's father which was not registered. The plaintiffs remained in possession till 1911, when they were dispossessed by defendant No. 2. In the suit to recover possession of the lands, the plaintiffs having lost the unregistered deed of sale adduced secondary evidence of its contents. The

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— **s. 54**—*concld.*

lower Courts accepted the evidence and decreed the suit. The defendants having appealed: *Held*, that the appeal failed inasmuch as the plaintiff's title was based on a contract of sale accompanied by delivery of possession which was proved. *Per* BEAMAN, *J.*—"I am clearly of opinion that neither the original unregistered deed of sale of 1899 nor secondary evidence of it was admissible in the present case to support the plaintiff's allegation that in 1899 there was a complete and valid sale of the property in suit effectuated by delivery of possession." *Per* MACLEOD, *J.*—"In my opinion in cases of transfer of property under the value of Rs. 100, if the transfer is effected by delivery of possession accompanied by an unregistered document that document can be adduced in evidence in order to show what was the character of the possession given by the vendor of the land to the purchaser." DAWAL PIRANSHAH *v.* DHARMA RAJARAM (1917) . . **I. L. R. 41 Bom. 550**

3. ——— *Sale of immoveable property of less than Rs. 100 in value—Delivery accompanied by an unregistered conveyance—Conveyance if admissible in evidence—Oral evidence to prove sale, if admissible.* When the property sold is less than Rs. 100 in value and the sale is effectuated or completed by delivery of possession, there is no reason why the transaction should not be evidenced by a writing in the terms of a conveyance even though the document is not registered. The document does not confer title and is merely evidentiary, but having regard to s. 91 of the Evidence Act it may be the only admissible evidence of the nature and terms of the transaction, though that section would not exclude proof of the fact of delivery of possession. JUMAN SHEIKH *v.* MOHAMMAD NOBINEOAZ (1917) **21 C. W. N. 1149**

——— **s. 55** (*2*)—

See CONTRACT ACT (IX OF 1872), S. 73. **I. L. R. 40 Mad. 338**

——— **s. 58**—*Morigage—Construction of document.* A bond was executed in the following terms:—"I have borrowed Rs. 1,000 from so and so . . . and ⅓ out of the entire 20 biswa zamindari property in . . . belonging to me, and have brought the same to my use. I therefore covenant and give it in writing that I shall repay the aforesaid amount with interest, etc. Until the repayment of the aforesaid amount I shall not transfer the aforesaid property . . . If I do so, then such transfer shall be invalid. I have, therefore, executed these few presents by way of a bond (*tamassuk*): *Held*, that the document did not constitute a simple mortgage, as there was no transfer of a specific interest in immoveable property to the lender nor any power of sale conferred on him. *Dalip Singh* v. *Bahadur Ram, I. L. R. 34 All. 446*, referred to by PIGGOTT, *J.* MOHAN LAL *v.* INDOMATI (1916) **I. L. R. 39 All. 244**

——— **ss. 58, 59, 68**—

See MORTGAGE . **I. L. R. 44 Calc. 38**

——— **s. 59**—*Deed of mortgage—Attestation—Execution—Mark by illiterate executant—Mark described by the scribe—Signature—General Clauses Act (X of 1897), s. 3, cl. 52.* An illiterate person signed a deed of mortgage by putting his mark to it, which mark was described by the scribe of the deed. It was attested by two witnesses. The deed was sought to be proved by the testimony of one of the witnesses and the scribe: *Held*, that the deed was duly proved, for its execution was completed when the executant made his mark, and the object of the scribe in describing the mark was to authenticate the mark, that is, to vouch the execution. GOVIND BHIKAJI *v.* BHAU GOPAL (1916) . . . **I. L. R. 41 Bom. 384**

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— **s. 59**—*concld.*

——— **s. 67**—*Right of puisne mortgagee to sue for sale subject to prior mortgages—Suit for sale by first mortgagee, without impleading subsequent mortgagee—Purchaser in execution, rights of—Right of puisne mortgagee to sue for sale against purchaser—Purchaser in puisne mortgagee's suit, right of.* Where a prior mortgagee sued for sale on his mortgage without making a puisne mortgagee a party to his suit and obtained a decree, and in execution of the decree the property was sold and purchased by a third person, the puisne mortgagee is entitled to sue for sale on his mortgage subject to the prior mortgage after making the purchaser a party to his suit. *Mulla Vittil Seethi* v. *Achuthan Nair, 21 Mad. L. J. 213*, followed. *Venkatagiri* v. *Sadagopa Chariar, 22 Mad. L. J. 129*, and *Venkatanarasammah* v. *Ramiah, I. L. R. 2 Mad. 108*, dissented from. *Muhammad Usan Rowthan* v. *Abdulla, I. L. R. 24 Mad. 171*, *Venkataramana Iyer* v. *Gompertz, I. L. R. 31 Mad. 425*, and *Rangayya Chettiar* v. *Parthasarathi Naickar, I. L. R. 20 Mad. 120*, referred to. Case law on the subject reviewed. Rights of purchasers in the prior or subsequent mortgagee's suits discussed. CHINNU PILLAI *v.* VENKATASAMY CHETTIAR (1915) . **I. L. R. 40 Mad. 77**

——— **s. 68**—

See CIVIL PROCEDURE CODE, 1908, S. XXXIV, R. 14. **I. L. R. 39 All. 36**

——— **s. 69**—*Sale by mortgagee—Surplus proceeds retained by mortgagee—Whether attachable under warrant under Criminal Procedure Code (V of 1898), s. 386—Priority of Crown over attaching creditor.* A mortgagee sold the mortgaged property under a power of sale, and after discharging his own dues, retained the surplus sale-proceeds for payment to the mortgagor. The mortgagor was convicted and sentenced to pay a fine which, if recovered, was directed to be paid to the complainant. A warrant for recovery of the fine was issued under s. 386 of the Criminal Procedure Code against the fund in the hands of the mortgagee who paid the amount to the bailiff. The plaintiff, who had attached the mortgaged property in execution of a decree against the mortgagor, disputed the right of the Crown to proceed against the fund, or at least in preference to him, and sued the Secretary of State for India and the complainant to whom the amount was paid. *Held*, (*i*) that the surplus amount retained by the mortgagee was money held in trust by him for the mortgagor under s. 69 of the Transfer of Property Act; (*ii*) that a warrant could be issued for the levy of the fine by distress on the amount in the hands of the mortgagee under s. 386 of the Criminal Procedure Code; and (*iii*) that the fine was a Crown debt which had priority over the plaintiff's

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— s. 69—*concld.*

debt, though the fine, if recovered, was directed to be paid to the complainant. PICHU VADHIAR *v.* THE SECRETARY OF STATE FOR INDIA (1916) **I. L. R. 40 Mad. 767**

——— ss. 83, 84—

1. ——— *Deposit in Court—Title of mortgagee's legal representative in dispute in suit.—Withdrawal by mortgagor before decision in suit—Cessation of interest.* Where a mortgagor, who had deposited in Court under s. 83 of the Transfer of Property Act the money due from him on the mortgage, withdrew the amount from Court before the title of the legal representatives of the mortgagee, which was then in dispute, was established in a suit: *Held*, that the mortgagor was not entitled to exemption from interest on the mortgage amount from the date of the deposit under s. 84 of the Transfer of Property Act. *Krishnasami Chettiar* v. *Ramasami Chettiar, I. L. R. 35 Mad. 44*, referred to. THEVARAYA REDDY *v.* VENKATACHALAM PANDITHAN (1916) **I. L. R. 40 Mad. 804**

2. ——— *Mortgage—Redemption—Right of owner of share in property mortgaged to redeem the entire mortgage.* The owner of a portion only of the equity of redemption is competent to maintain a suit for redemption of the entire mortgage even against the will of the mortgagee. *Norender Narain Singh* v. *Dwarka Lall Mundur, L. R. 5 I. A. 18, Huthasanan Nambudri* v. *Parameswaran Nambudri, I. L. R. 22 Mad. 209, Velayadain Chetty* v. *Alangaran Chetty, 15 I. C. 605*, and *Mustafa Khan* v. *Shadi Lall, 10 Oudh C. 31*, referred to. *Girish Chunder Dey* v. *Juramoni De, 5 C. W. N. 83*, dissented from. FAKIR CHAND *v.* BABU LAL (1917) . **I. L. R. 39 All. 719**

——— s. 91—*Mortgage —Right to redeem—Attaching creditor.* Certain property was mortgaged on the 4th of April, 1889. One *N. K.* obtained a simple money decree against the mortgagor on the 25th of May, 1889. Before judgment *N. K.* had attached the property, and it was subsequently sold by auction and purchased by *L. R.* on the 28th of September, 1902. In 1897, the mortgagees sued on their mortgage without impleading either *N. K.* or *L. R.* In execution of their decree the property was sold and purchased by defendant's father, who obtained possession on the 25th of April, 1900. *L. R.* brought suit for recovery of possession or, in the alternative, for redemption. *Held*, that under s. 91 (*f*) of the Transfer of Property Act, *N. K.* was entitled to redeem, and the plaintiff, as a person claiming under him, is also entitled to redeem. LAKHPAT RAI *v.* FAKHR-UD-DIN (1917) **I. L. R. 39 All. 536**

——— ss. 106, 107—

See LANDLORD AND TENANT. **I. L. R. 44 Calc. 403**

——— s. 107—

See TENANCY-AT-WILL. **I. L. R. 44 Calc. 214**

——— s. 108 (J)—*Lessor and lessee—Mortgage with possession by lessee—Mortgagee not liable to the lessor for rent—Privity of estate, meaning of.* A mortgagee with possession from the lessee is not liable to the lessor for rent as there is neither

TRANSFER OF PROPERTY ACT (IV OF 1882) —*concld.*

——— s. 108—*concld.*

privity of estate nor of contract between them. *Per* WALLIS, *C. J.*—Privity of estate is a technical term of English Law and under that law, such privity arises only where the whole of the lessee's interest is assigned over and not where a subsidiary interest is carved out of the lessee's interest. The Transfer of Property Act in enacting s. 108 (*j*) does not seem to have introduced any departure from the English Law. English and Indian cases reviewed. THETHALAN *v.* THE ERALPAD RAJAH, CALICUT (1917) . **I. L. R. 40 Mad. 1111**

——— s. 123—

See GIFT . **I. L. R. 40 Mad. 2 04**

TRANSFERABILITY.

See OCCUPANCY HOLDING. **I. L. R. 44 Calc. 272, 720**

TRAVELLING WITHOUT TICKET.

See RAILWAY PASSENGER. **I. L. R. 44 Calc. 279**

TRESPASSER.

——— *Tenants settled by trespasser—Principle of Binad Lal Pakrashi's Case, if applies when tenant never got possession.—Bonâ fides.* The principle of the Full Bench case of *Benad Lal Pakrashi* v. *Kalu Pramanick, I. L. R. 20 Calc. 708*, is an encroachment upon the ordinary rule of law that a grantor is not competent to confer upon the grantee a better title than what he himself possesses and must be cautiously applied and is not to be extended. In order to make the principle available, it is essential that the lessor should be in possession of the disputed property as *de facto* landlord and that in good faith he should have inducted into the land a cultivator who has accepted the settlement in good faith. Want of good faith either on the part of the lessor or the lessee makes the rule inapplicable. The principle could not be applied in favour of the plaintiff who took a lease from the owner after his interest had been sold in execution of a decree, who never obtained juridical possession of the disputed property, and who had to be bound down by a Criminal Court to prevent him from interfering with the possession of the defendant. KRISHNA NATH CHAKRAVARTI *v.* MAHOMED WAFIZ (1915) **21 C. W. N. 93**

TRIAL.

——— a new, demand for—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 367. **I. L. R. 40 Mad. 108**

TRIAL BY JURY.

See JURY, TRIAL BY.

TRIBAL COMMUNITY, PUNJAB.

See CUSTOM . **I. L. R. 44 Calc. 749**

TRUST.

See MAHOMEDAN LAW—GIFT. **I. L. R. 41 Bom. 372**

TRUSTEES.

——— line of, failure of—

See RELIGIOUS ENDOWMENT. **I. L. R. 40 Mad. 612**

TRUSTEES—*concld.*

———— **of charitable inams.**—

See CHARITABLE INAMS.

I. L. R. 40 Mad. 939

TRUSTEES AND TEMPLE COMMITTEES.

———— **respective rights of**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . **I. L. R. 40 Mad. 212**

TRUSTS ACT (II OF 1882).

———— **ss. 41, 95**—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 . **I. L. R. 41 Bom. 438**

U

UBAYAKAR.

See HINDU LAW—CUSTOM.

I. L. R. 40 Mad. 1108

ULTRA VIRES RULE.

———— **rule 44**—

See SCHEDULED DISTRICTS ACT (XIV OF 1874), s. 7 . **I. L. R. 41 Bom. 657**

UNCHASTITY.

See HINDU LAW—MAINTENANCE.

I. L. R. 39 All. 234

UNDER-RAIYAT.

See OCCUPANCY HOLDING.

I. L. R. 44 Calc. 272

UNITED PROVINCES AND OUDH ACTS.

———— **1881—XII.**

See NORTH-WESTERN PROVINCES RENT ACT.

———— **1886—XXII.**

See OUDH ACT.

———— **1901—II.**

See AGRA TENANCY ACT.

———— **1901—III.**

See UNITED PROVINCES LAND REVENUE ACT.

———— **1910—IV.**

See UNITED PROVINCES EXCISE ACT.

———— **1916—II,**

See UNITED PROVINCES MUNICIPALITIES ACT.

UNITED PROVINCES EXCISE ACT (IV OF 1910).

———— **s. 40**—*Rules framed under Act—Transfer or sub-lease of licence—Agreement to share profits.* The plaintiff entered into an agreement with the defendant, who was a drug contractor, in consideration of a sum money advanced by him to the defendant, that he would be entitled to a share in the profits or responsible for the losses of the drug business to an extent therein set forth. *Held*, that such an agreement was neither a transfer nor a sub-lease of the drug contractor's licence and did not constitute a violation of r. 82 of the rules framed under the United Provinces Excise Act, 1910. SHIAM BIHARI LAL *v.* MALHI (1916) . . **I. L. R. 39 All. 107**

UNITED PROVINCES EXCISE ACT (IV OF 1910)—*concld.*

———— **s. 40**—*concld.*

UNITED PROVINCES LAND REVENUE ACT (III OF 1901).

———— **s. 18**—*Suit for rent before Assistant Collector—Sanction to prosecute granted by him—Officer at the time of granting sanction placed in charge of another sub-division of the same district—Jurisdiction.* An Assistant Collector tried a suit under the Agra Tenancy Act, in the course of which a question as to the genuineness of a certain document tendered in evidence by the defendants arose. Subsequently to the decision of that suit the Assistant Collector was put in charge of the work of another sub-division in the same district. *Held*, that such a transfer of work did not deprive him of jurisdiction to grant sanction for a prosecution in respect of the forging of the document so tendered. DALIP SINGH *v.* NAWAL (1917) . . . **I. L. R. 39 All. 297**

———— **s. 34**—

See AGRA TENANCY ACT (II OF 1901), s. 158 . **I. L. R. 39 All. 689**

———— **s. 36**—*Agra Tenancy Act (II of 1901), s. 41—Ex-proprietary tenant—Enhancement of rent.* The tenant of an ex-proprietary holding, whose rent had been fixed by the Collector under s. 36 of the United Provinces Land Revenue Act, entered into an agreement with the zamindar to pay an enhanced rent. The agreement was effected by means of a registered instrument, and the enhanced rent was not in excess of the beneficial rate mentioned in s. 10 of the Act, but it was made within the period of ten years from the fixation of rent by the Collector. *Held*, that such agreement was not open to any legal objection. BHAIRON PRASAD *v.* SOMWARPURI (1917) **I. L. R. 39 All. 318**

———— **s. 118**—*Partition—Co-sharers—Effect of order allotting to one co-sharer land upon which are standing buildings belonging to another co-sharer.* Where a partition has been effected under the provisions of the United Provinces Land Revenue Act, 1901, and the site of the house of one co-sharer has been allotted to the share of another co-sharer, the presumption is that the owner of the house is to retain possession of the house. The mere fact that ground rent has not been assessed cannot deprive the owner of the house of his right to it. *Iswar Prasad* v. *Jagannath Singh, All. Weekly Notes, 1906. 194*, followed. *Nandan Pat Tewari* v. *Radha Kishun Kalwar, 5 Indian Cases 664*, distinguished. SARUP LAL *v.* LALA (1917) **I. L. R. 39 All. 707**

———— **ss. 203 to 207**—*Agra Tenancy Act (II of 1901), s. 95—Arbitration—Decision of Revenue Court based on award—Dispute between rival tenants as to possession of land—Suit for possession—Jurisdiction—Civil and Revenue Courts.* *Held*, that s. 207 of the United Provinces Land Revenue Act, 1901, does not bar a separate suit on title, independently of the decision of the Revenue Court based on the award, to recover possession of property which has been the subject of arbitration proceedings under ss. 203 to 206 of the Act. *Girdhari Chaube* v. *Ram Bharan Misir, 14 All. L. J. 85*, approved and followed.

UNITED PROVINCES LAND REVENUE ACT (III OF 1901)—*concld.*

——— s. 203—*concld.*

Held, further, that a suit between the rival tenants adjoining holdings to determine the question whether a certain parcel of land appertains to the holding of the one or of the other is cognizable by the civil court. *Bhup Ram* v. *Ram Lal*, *I. L. R. 33 All. 795*, and *Jagannath* v. *Ajudhia Singh*, *I. L. R. 35 All. 14*, referred to. TAPSI SINGH *v.* HARDEO SINGH (1917)

I. L. R. 39 All. 711

——— s. 233 (k)—*Partition—Suit to recover property which had been the subject of a partition.* Certain co-sharers in a village applied for partition of their shares under s. 107 of the United Provinces Land Revenue Act, 1901. Notice was issued to all the recorded co-sharers, as required by s. 10 of the Act, and thereupon an application was made by other co-sharers, under cl. (2) of the section, praying for partition of their shares. In that application the applicants set forth the extent of the shares which they prayed should be formed into one lot, or *qura*. Subsequently a proceeding was drawn up under s. 114 of the Act, declaring the basis upon which partition was to be effected. Some time after the partition was completed certain of the parties to the partition proceedings instituted a suit in a civil court to recover possession of shares other than those specified in the application aforesaid, upon which the partition had been based. *Held* by BANERJI and TUDBALL, *J. J.* (RICHARDS, *C. J.*, *dissentiente*), that the suit was barred by s. 233 (*k*) of the Act. *Muhammad Sadiq* v. *Laute Ram*, *I. L. R. 23 All. 291*, referred to. *Shambhu Singh* v. *Daljit Singh*, *I. L. R. 38 All. 243*, distinguished. BIJAI MISIR *v.* KALI PRASAD MISIR (1917)

I. L. R. 39 All. 469

——— s. 234—

See CONTRACT ACT (IX OF 1872), S. 23.

I. L. R. 39 All. 51, 58

UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916).

——— ss. 185, 186—*Erection of building without sanction of Municipal Board—Prosecution—Notice for demolition of building not necessary before prosecution.* Where it is found that a building for which the sanction of a Municipal Board is required has been erected either without such sanction or in contravention thereof, it is not necessary for the board to direct the demolition of the building before it can prosecute the person who has erected it. EMPEROR *v.* HASHIM ALI (1917) . . **I. L. R. 39 All. 482**

——— ss. 209, 210—"*Erect a structure*"—*Movable planks placed across a public drain in front of a shop. Held*, that the placing, without the permission of the Municipal Board, of movable planks over a municipal drain outside a shop, the planks being put out in the morning when the shop was opened and removed at night, did not amount to an offence under the United Provinces Municipalities Act, 1916. The expressions used in s. 209 of that Act indicate that it refers to something of a permanent nature. *Kamta Nath* v. *The Municipal Board of Allahabad*, *I. L. R. 28 All. 196*, referred to. EMPEROR *v.* MUHAMMAD YUSUF (1917) . . **I. L. R. 39 All. 386**

UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916)—*concld.*

——— s. 274—"*Occupier.*" *Held*, that a person of whom no more could be said that he was held responsible for the upkeep and cleanliness of a temple by the former adhikari was not an 'occupier' of the temple and could not be convicted as such under s. 274 of the United Provinces Municipalities Act, 1916, for throwing rubbish on to the street. EMPEROR *v.* PIARI LAL (1917) . . **I. L. R. 39 All. 309**

UNIVERSITY OF MADRAS.

See SPECIFIC RELIEF ACT (I OF 1877), S. 45 . . **I. L. R. 40 Mad. 125**

UNPROFESSIONAL CONDUCT.

See PROFESSIONAL MISCONDUCT.

USAGE.

See USAGE OF THE PROFESSION.

I. L. R. 44 Calc. 741

USAGE OF THE PROFESSION.

See BARRISTER . **I. L. R. 44 Calc. 741**

USUFRUCTUARY MORTGAGE.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 109 . . **I. L. R. 39 All. 200**

See SALE FOR ARREARS OF REVENUE.

I. L. R. 44 Calc. 573

——— construction of—

See MORTGAGE . **I. L. R. 44 Calc. 388**

V

VAKIL.

See PROFESSIONAL MISCONDUCT.

I. L. R. 40 Mad. 69

——— *Vakil, right of evidence of, at hearing of application against order of Presidency Small Cause Court refusing sanction to prosecute, before Division Bench appointed for the purpose.* An application for sanction to prosecute the plaintiffs was rejected by the Judge of the Court of Small Causes at Calcutta who tried the suit. Against this, the defendants applied to the Judge of the High Court sitting on the Original Side, who remanded the matter to the trial court. On an appeal under the Letters Patent the order of remand was set aside and the application was remitted to a divisional bench appointed for the purpose, for disposal. At the hearing, the opposite party was represented by a vakil. *Held*, *Per* TEUNON, *J.* (CHAUDHURI, *J.*, *differing*), that the vakil had the right of audience. *Per* TEUNON, *J.*—That the Presidency Small Cause Court is an inferior or subordinate court and in dealing with its judgments or orders the High Court is a superior court exercising not original but appellate or revisional jurisdiction. From this and the provisions of s. 4 of the Legal Practitioners Act it follows that the vakil was entitled to be heard. *Per* CHAUDHURI, *J.*—That the power of superintendence, direction and control which was possessed by the Supreme Court over the Presidency Small Cause Court appertains to the Original Side of the High Court and all such powers when exercised by the Original Side

VAKIL—*concld.*

are exercised in its Original Jurisdiction within the meaning of s. 4 of the Legal Practitioners Act. BUDHU LAL *v.* CHATTU GOPE (1917) **21 C. W. N. 654**

VALIDITY OF WAKF.

See MAHOMEDAN LAW—WAKF. **I. L. R. 44 I. A 21**

VALUATION OF SUIT.

See ADMINISTRATION SUIT. **I. L. R. 44 Calc. 890**

See CIVIL PROCEDURE CODE, S. 115. **I. L. R. 39 All. 723**

VALUE.

See VALUE OF PROPERTY.

VALUE OF PROPERTY.

See APPEAL TO PRIVY COUNCIL. **I. L. R. 44 Calc. 119**

VATAN.

See HEREDITARY OFFICES ACT (BOM. III OF 1874), SS. 4, 53. **I. L. R. 41 Bom. 677**

See HEREDITARY OFFICES ACT (BOM. III OF 1874 AS AMENDED BY BOM. ACT III OF 1910), SS. 25, 36, 63, 64. **I. L. R. 41 Bom. 23**

VEHICLE.

See BOMBAY DISTRICT POLICE ACT (BOM. IV OF 1890), S. 61, CL. (*b*). **I. L. R. 41 Bom. 464**

VENDOR AND PURCHASER.

See SALE OF IMMOVEABLE PROPERTY. **I. L. R. 39 All. 166**

——— **rights of**—

See MORTGAGE . **I. L. R. 44 Calc. 542**

——— *Title, proof of—Contract to give a marketable title free from all reasonable doubts—Evidence of discharge of mortgage—Recitals in release—Registration Act (III of 1877).* The question in this appeal was whether a vendor had made out "a marketable title free from all reasonable doubts," which he had contracted to do by a written agreement, dated 18th October 1913, to sell certain land in Bombay. There had been a mortgage effected on the property, on 26th April 1892, in favour of two joint mortgagees by an agreement of charge duly registered under the Registration Act (III of 1877) and the deposit of the title-deeds of the property with the mortgagees. To deduce a good title it became necessary to prove that the mortgage had been discharged. As proof of that fact the vendor produced a certified copy of a release, dated 30th September 1902, which had been executed by only one of the joint mortgagees, but which recited the death of the other mortgagee, the fact that his co-mortgagee was his sole heir and the redemption of the property from the equitable charge created by the agreement of 26th April 1892. One of the title-deeds of the property was not produced by the vendor. *Held* (reversing the decisions of the Courts in India), that the recitals in the release were not evidence against the joint mortgagee, and that the title contracted for had not been deduced. SHRINIVASDAS BAVRI *v.* MEHERBAI (1916) . . **I. L. R. 41 Bom. 300**

VILLAGE CHAUKIDARI ACT (BENG. VI OF 1870).

——— **s. 50**—

See CHAUKIDARI CHAKARAN LANDS. **I. L. R. 44 Calc. 841**

——— **s. 60**—*Enquiry, nature of—Notice, persons entitled to—Notice, absence of, effect of—Commissioner's report if final and conclusive—Reg. VII of 1822, s. 21.* *Held*, that s. 60 of the Chaukidari Chakaran Act (VI of 1870, B. C.) lays down that in *chaukidari chakaran* enquiries the procedure shall be in accordance with Reg. VII of 1822 and the absence of notice would render the proceedings of the Commissioner of no effect against a person who was entitled to notice and the Civil Court could interfere, although but for such defect the order of the Commissioner would be final and conclusive. SARAT CH. RAY *v.* SECRETARY OF STATE FOR INDIA (1916) **21 C. W. N. 238**

VYAVAHARA MAYUKHA.

See HINDU LAW—STRIDHAN. **I. L. R. 41 Bom. 618**

W

WAIVER.

——— *Jurisdiction—Leave to sue—Letters Patent, 1865, cl. 12—Estoppel.* Where the plaintiff in his plaint alleges that portion of the cause of action arises outside the local limits of the Ordinary Original Civil Jurisdiction of this Court and fails to take leave under cl. 12 of the Letters Patent, the defendant may by appearing and pleading waive the objection to the jurisdiction. Where, however, the plaintiff alleges that the whole cause of action arises within the local limits of the Ordinary Original Civil Jurisdiction thus setting up a complete jurisdiction in the Court, and the defendant is called upon to plead to this and does plead, but it turns out at the trial that the Court had not complete jurisdiction as portion of the cause of action arose within and portion outside the local limits of the Ordinary Original Civil Jurisdiction, the defendant cannot be held bound on the doctrine of estoppel on the ground that he waived the objection of want of jurisdiction. *King* v. *Secretary of State for India, I. L. R. 35 Calc. 394*, and *Suckan* v. *Weiner, 17 T. L. R. 494*, referred to. SHAMA KANTA CHATTERJI AND COMPANY *v.* KUSUM KUMARI (1916) **I. L. R. 44 Calc. 10**

WAJIB-UL-ARZ.

See PRE-EMPTION. **I. L. R. 39 All. 127, 544**

——— *Value of, as evidence, as record of traditions.* A Wajib-ul-Arz in a village administration paper, prepared by a village official, in which are recorded the statements of persons possessing interests in the village relative to existing rights and customs. As such they are of considerable value in the determination of such rights and customs. But statements which merely narrate traditions and purport to give the history of devolution in certain families not even of the narrators, stand in no better position than any other tradition. MURTAZA HUSAIN KHAN *v.* MAHOMED YASIN ALI KHAN (1916) . . . **21 C. W. N. 410**

WAKF.

See MAHOMEDAN LAW—WAKF.

———— validity of—

See RES JUDICATA.
I. L. R. 44 Calc. 698

See MAHOMEDAN LAW—WAKF.

WARRANT.

See ARREST, WARRANT TO.

WASTE.

———— ownership of—

See MIRASI VILLAGE.
I. L. R. 40 Mad. 410

WASTE LANDS.

———— ownership of kudevaram—

See LIMITATION ACT (ACT XV OF 1877), S. 22 . . **I. L. R. 40 Mad. 722**

WASTE LANDS ACT (XXIII OF 1863).

———— s. 18—*Procedure under that Act—Sale, by Government, of lands under the Act—Error in advertisement of sale—Absence of proof of proclamation ousting jurisdiction of ordinary Courts and constituting a Special Court—Three years' limit for claims only applicable to proceedings before Special Court—Act applied to other lands than those only held by Government.* Great weight had always been given by the Judicial Committee to the accuracy of survey maps: they were not conclusive, but in the absence of evidence to the contrary they will be presumed to be accurate. This appeal arose out of a suit by the Maharajah of Tipperah to recover possession of certain plots of land in Sylhet from the Government and from certain Tea Companies who in virtue of leases granted by the Government were in possession of the lands in suit. There were concurrent findings of fact by the Courts in India that the lands in question were *de facto* in the possession of the plaintiff and his predecessors since the beginning of the 19th century; and that the dispossession had taken place within 12 years before suit so as to exclude the plea of limitation: and the Judicial Committee substantially upheld the decision of the High Court in favour of the plaintiff. One plot, however, had been sold by the Government as waste land and the sale was not in any way stopped or interfered with by the Rajah, and more than three years had elapsed from the date of delivery to the purchaser, which was the period provided by s. 18 of the Waste Lands Act (XXIII of 1863) after which no "claim to any land, or to compensation or damages in respect of any land sold as waste land could be received"; and it was contended that the suit was barred by s. 18 as to that plot. *Held*, that the Act was one which was drastic in its character and made great invasion on private rights. The defendant who pleaded it must therefore bring the matter strictly within its provisions which clearly pointed to the necessity of proper intimation being given by Government as to the proposed sale, and where they had given a misleading notice and had advertised a sale of lands in one district when they were situated in another district, the whole of the sale proceedings failed for want of a proper basis. When a claim was allowed under the Act procedure was provided for the issue of a proclamation which ousted the jurisdiction of the ordinary Courts and constituted a Special Court, and no proof had in this case been given that any proclamation was issued. The provision as to three years in s. 18 was clearly applicable to the proceedings before the Special Court and that Court alone. The procedure under the Waste Lands Act is not applicable only to lands belonging to the Government. SECRETARY OF STATE FOR INDIA *v.* BIRENDRA KISHORE MANIKYA (1916)
I. L. R. 44 Calc. 328

WASTE LANDS ACT (XXIII OF 1863)—*concld.*

———— s. 18—*concld.*

WATER.

———— flowing, right to—

See IRRIGATION CESS ACT (MAD. ACT VII OF 1865), S. 1 AND PROVISO, SS. 1 AND 2 . . **I. L. R. 40 Mad. 886**

WATER RIGHTS.

See MADRAS IRRIGATION CESS.
L. R. 44 I. A. 166

WEIGHTS AND MEASURES.

———— bye-law for—

See BOMBAY MUNICIPAL ACT (BOM. ACT III OF 1888), SS. 418, 461, CL. (*o*).
I. L. R. 41 Bom. 580

WET RATE.

———— liability to pay—

See ESTATES LAND ACT (MAD. ACT I OF 1908), SS. 4, 27, 73 AND 143.
I. L. R. 40 Mad. 683

WIDOW.

———— alienation by—

See HINDU LAW—WIDOW.
I. L. R. 41 Bom. 93

———— minor, adoption by—

See HINDU LAW—ADOPTION.
I. L. R. 40 Mad. 925

WIDOW'S ESTATE.

———— alienation of, by Court of Wards—

See HINDU LAW—ADOPTION.
I. L. R. 40 Mad. 846

WIFE.

See HINDU LAW—MAINTENANCE.
I. L. R. 39 All. 234

WIFE'S COSTS.

See DIVORCE . **I. L. R. 44 Calc. 35**

WILL.

See HINDU LAW—WILL.

See CONSTRUCTION OF DOCUMENT.
I. L. R. 39 All. 311

See CUTCHI MEMONS.
I. L. R. 41 Bom. 181

See ESTOPPEL . **I. L. R. 44 Calc. 145**

See GUARDIANS AND WARDS ACT (VIII OF 1890), SS. 38 AND 7.
I. L. R. 40 Mad. 672

See MAHOMEDAN LAW—WILL.
I. L. R. 41 Bom. 377

———— bequest to daughter—

See HINDU LAW—JOINT FAMILY.
I. L. R. 40 Mad. 1122

WILL—*contd.*

——— **execution of**—

See SUCCESSION ACT (I OF 1865), S. 50.
I. L. R. 40 Mad. 550

——— **nomination by**—

See MUTT . **I. L. R. 40 Mad. 177**

1. ———*Construction—Bequest by Hindu testator to widow, daughter, and daughter's daughter—Succession Act (X of 1865), s. 111.* Where a testator intended that his wife, daughter and daughter's daughter should each have an absolute interest in the property, and so long as anybody descended from himself was in existence his brother's son or the latter's descendants should have no interest in the property and where the provisions of his will ran thus—"If my wife die before, my daughter Gangamoni Debya shall get the property, etc.": *Held*, that under the provisions of s. 111 of the Succession Act the daughter takes only a life interest. *Lallu* v. *Jagmohan, I. L. R. 22 Bom. 409, Mahendra Lal* v. *Rakhal Das, 17 C. L. J. 630, Tripurari Pal* v. *Jagat Tarini Dasi, I. L. R. 40 Calc. 274, Sures Chandra Palit* v. *Lalit Mohan Dutta Chowdhuri, 20 C. W. N. 463*, referred to. JAGAT BIJOY BHATTACHARJEE *v.* TOMIJUDDI HOWLADAR (1916)
I. L. R. 44 Calc. 181

2. ——— *Gift of life-estate with power of appointment—On failure to appoint estate to vest in legatee's heirs, executors and administrators—Construction—Absolute gift—Res judicata.* Testator bequeathed the income of a house to his two sons G. B. and B. B. for life, the moiety of the corpus to go to such person as each of his two sons shall by will or deed appoint and, in default of appointment, to their heirs, executors and administrators. *Held*, that the bequest conveyed an absolute estate in a moiety to each of the sons. G. B. was declared insolvent in Rangoon and in a suit filed before the Chief Court by the Official Assignee as Assignee of G. B.'s estate for the determination of the effect of the insolvency of G. B. on the bequest to him and his power of appointment, a consent decree was passed declaring that the Official Assignee was only entitled to a half share in the rents of the house during G. B.'s lifetime, without prejudice to the rights of his appointees or his heirs, executors and administrators. Subsequently G. B.'s adjudication was annulled. *Held*, that the consent decree did not operate as *res judicata* to prevent the High Court construing the bequest. BALTHAZAR *v.* BALTHAZAR (1917) **21 C. W. N. 992**

3. ———*Legatees long in possession in terms of will—Probate if should be refused on the ground that there is no estate to be administered.* Where a will has been propounded and proved, the Probate Court should grant probate even though it should appear that there were no debts due to or by the testator and the legatees have been in possession in accordance with the directions of the will for a long time, it being absolutely necessary for the legatees to establish their title by proving the will. The Probate Court cannot go into the question whether the legatees have acquired independent title by adverse possession. ADWAIT CHARAN MONDAL *v.* KRISHNADHONE SIRKAR (1917)
21 C. W. N. 1129

4. ——— *Construction of will—Absolute words and limiting words occurring in one and the same sentence—Intention of the testator.* A testator made the following provision in his will: "I appoint by this testament my brother Joaquim Serpes as my only and universal heir of all the immoveable property which I possess, and which may hereafter in any manner belong to me, with the strict obligation to him not to sell, exchange, or hypothecate it, but only to enjoy the usufruct thereof, and at his death to pass over the same to his male children preserving the same as a patrimony of the house." The question being raised whether upon a proper construction of the will Joaquim was merely a life tenant or whether he took absolutely. *Held*, that Joaquim was a mere life-tenant. ROSE D'SOUZA *v.* JOSEPH (1916)
I. L. R. 41 Bom. 70

WINDING UP.

See COMPANIES ACT (VII OF 1913), S. 162.
I. L. R. 39 All. 334

WIRE-FENCE.

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901), S. 3, CL. (7).
I. L. R. 41 Bom. 563

WITHDRAWAL OF SUIT.

See JURISDICTION OF HIGH COURT.
I. L. R. 44 Calc. 454

WOMEN.

See PLEADER . **I. L. R. 44 Calc. 290**

WORDS AND PHRASES.

——— **"affected"**—

See LAND ACQUISITION.
I. L. R. 44 Calc. 219

——— **"agriculturist"**—

See CIVIL PROCEDURE CODE, 1908, S. 60 (c) . . **I. L. R. 41 Bom. 475**

——— **"building"**—

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. ACT III OF 1901), S. 3, CL. (7). **I. L. R. 41 Bom. 563**

——— **"Court"**—

See PROFESSIONAL MISCONDUCT.
I. L. R. 44 Calc. 639

——— **"credible information"**—

See HABEAS CORPUS.
I. L. R. 44 Calc. 76

——— **"debt"**—

See CONTRACT ACT (IX OF 1872), S. 25
I. L. R. 40 Mad. 31

——— **"decree"**—

See CIVIL PROCEDURE CODE (1908), S. 2.
I. L. R. 39 All. 393

——— **"doubt"**

See JURISDICTION OF HIGH COURT.
I. L. R. 44 Calc. 595

——— **"engagements with Government"**—

See MADRAS IRRIGATION CESS.
L. R. 44 I. A. 166

——— **"family"**—

See HEREDITARY OFFICES ACT (BOM. III OF 1874), SS. 4, 53.
I. L. R. 41 Bom. 677

WORDS AND PHRASES—*contd.*

———— "finally decided"—

See ESTOPPEL . **L. R. 44 I. A. 213**

———— "gaming"—

See TOWNS NUISANCE ACT (MAD. ACT III OF 1889), S. 3 (*10*).
I. L. R. 40 Mad. 556

———— "judgment"—

See APPEAL, RIGHT OF.
I. L. R. 44 Calc. 804

———— "legal necessity"—

See HINDU LAW—ALIENATION.
I. L. R. 39 All. 485

———— "mai hak hakuk"—

See MINERALS . **L. R. 44 I. A. 246**

———— "obtaining"—

See TRADING WITH THE ENEMY.
I. L. R. 40 Mad. 34

———— "occupier"—

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916), S. 274.
I. L. R. 39 All. 309

———— "person aggrieved"—

See PROVINCIAL INSOLVENCY (ACT III OF 1907), SS. 22, 46.
I. L. R. 39 All. 152

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 43 (*2*), 46.
I. L. R. 39 All. 171

———— "proceeding"—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 47 . **I. L. R. 39 All. 267**

———— "produced"—

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 1002

———— "public place"—

See TOWNS NUISANCE ACT (MAD. III OF 1889), S. 3 (*10*).
I. L. R. 40 Mad. 556

———— "railway"—

See RAILWAY PASSENGER.
I. L. R. 44 Calc. 279

———— "railway administration"—

See LOSS OF GOODS.
I. L. R. 44 Calc. 16

———— "reasonable suspicion"—

See HABEAS CORPUS.
I. L. R. 44 Calc. 76

———— "risk note"—

See CONTRACT . **I. L. R. 39 All. 418**

———— "rolling stock"—

See RAILWAY PASSENGER.
I. L. R. 44 Calc. 279

WORDS AND PHRASES—*concld.*

———— "samanodaka"—

See HINDU LAW—INHERITANCE.
I. L. R. 40 Mad. 654

———— "santan"—

See WILL . . **21 C. W. N. 854**

———— "street"—

See LAND ACQUISITION.
I. L. R. 44 Calc. 219

———— "trade-mark"—

See PENAL CODE (ACT XLV OF 1860), SS. 478, 482.
I. L. R. 39 All. 123

———— "youthful offender"—

See REFORMATORY SCHOOLS ACT (VIII OF 1897), S. 31 . **I. L. R. 39 All. 141**

WORSHIPPERS.

———— right of suit of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 40 Mad. 212**

WRIT.

———— power to issue—

See HABEAS CORPUS.
I. L. R. 44 Calc. 459

WRONGFUL ACTS.

See MORTGAGE . **I. L. R. 44 Calc. 388**

Y

YATI.

See HINDU LAW—ADOPTION.
I. L. R. 40 Mad. 846

Z

ZAMINDAR.

———— engagement by, with Government—

See IRRIGATION CESS ACT (MAD. VII OF 1865), S. 1, PROVISOES 1 AND 2.
I. L. R. 40 Mad. 886

———— rights of—

See MADRAS IRRIGATION CESS.
L. R. 44 I. A. 166

ZAMINDAR OR MITTADAR.

———— right of, to a charge—

See INAMDAR . **I. L. R. 40 Mad. 93**

ZAMINDARIS.

———— settled at Permanent Settlement—

See IRRIGATION CESS ACT (MAD. VII OF 1865), S. 1, AND PROVISOES 1 AND 2.
I. L. R. 40 Mad. 886

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
8, HASTINGS STREET